United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

77-1085

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1085

B p/s

UNITED STATES OF AMERICA,
Appellee,

—vs.—

SEBASTIAN INTERSIMONE,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

UNITED STATES COURT OF APPEALS
FILED
AUG 19 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JAMES ROBERT YON
Attorney for Appellant
620 Madison Street
Tampa, Florida 33602

PAGINATION AS IN ORIGINAL COPY

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A1 Docket Entries

C

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO
MINOR OFFENSE MO
MISDEMEANOR MI
x FELONY FE

JUDGE ~~XXXXXXX~~ Assigned 0862
Disp./Sentence
0208 District 1 Office

U.S. vs. INTERSIMONE, SABASTIAN a/k/a "Mr. B" Cl 1-31-78
(LAST, FIRST, MIDDLE)

A1

☐ JUVENILE

Case Filed Mo. Day 04 05
No. of Defts *33

76 Yr. 0324 Docket No. 05 Def.

U.S. MAG. CASE NO. 76-510

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to viol. Narco. Laws,	1
21:812, 841	Distr. & possess. of Cocaine II.	12

SUPERSEDING COUNTS

BAIL • RELEASE
☐ Denied
AMT Set $ 000
☐ Fugitive
☐ Pers. Recog
☐ PSA
Date
conditions
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Prty Cust
☐ Other
☐ Bail Not Made
☐ Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST 04-21-76
Summons Served
First Appearance
High-risk Date
Indict. Waived
In Charging Doctmt

INDICTMENT x Information 4-5-76
Superseding Indict/Info

ARRAIGNMENT 4-29-76
1st Plea 4-29-76
Final Plea
☒ NG ☐ G ☐ NOL
C. Plea W/Drawn
☐ NG ☐ G ☐ NOL

TRIAL
Trial Set For
Voir Dire ☐
Trial Began
Trial Ended

Disposition of Charges
☐ Convicted
☐ Acquitted
☐ Dismissed
☐ WOP ☐ WP
☐ On Government's Motion

SENTENCE
☐ On All Charges
☐ On Lesser Offense(s)

MAGISTRATE

Search Warrant Issued / Return
Summons Issued / Served
Arrest Warrant Issued
COMPLAINT
OFFENSE (In Complaint)
DATE
INITIAL/NO.
INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled / Date Held
☐ WAIVED ☐ NOT WAIVED
☐ INTERVENING INDICTMENT
INITIAL/NO.
Tape Number
OUTCOME:
☐ DISMISSED
☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

ATTORNEYS Defense: ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

Daniel J. Beller
791-1992

207

Wallace Musoff/Wagman Cannon & Musoff, P.C
136 E. 57th St., NYC 10022 Tel. [illegible]
- 951

Show Last names and suffix numbers of other defendants on same indictment/information

Alvarez, et al.

EXCLUDABLE DELAY (a) (b) (c) (d)

DATE	PROCEEDINGS	
4-5-76	Indictment filed.	Lasker, J,
	Indictment ordered sealed.	Lasker, J.
4-20-76	Indictment ordered unsealed. B/W ordered. B/W issued.	
	Indictment ordered resealed.	Brieant, J.
4-21-76	Indictment ordered unsealed.	Brieant, J.
4-29-76	Deft. (Atty present) enters plea of not guilty. Bail continued as fixed by Magistrate $125,000. Remanded. Case assigned to Judge Owen for all purposes. Attys' directed to report to chambers immediately.	MacMahon, J
5-3-76	**Remand Issued.**	
5-5-76	**Filed the following papers rec'd from Mag. Bernikow. (Mag. #76-510)** **Docket Entry Sheet** **Criminal Complaint** **Disposition Sheet** **Warrant for Arrest- executed 4-21-76.** **Notice of Appearance by Wagman, Cannon & Musoff, p.c. by Wallace Musoff, 136 E. 57th Street, NYC 10022, 753-2900.**	

JH

Hila has Copy - None

A 2

DATE	IV. PROCEEDINGS (continued) PAGE TWO (DOCUMENT NO.)	V. EXCLUDABLE DELAY Interval Section II (a)	Start Date End Date (b)	Ltr Code (c)	Total Days (d)
4-29-76	Dft. Sebastian Intersimone(Atty. Wallie Museff Present) Applies for reduction of Bail $125,000.00 as set by Mag. Application. Denied.......Owen J.				
5-4-76	Filed PRB in the Amt. of $125.000.00 [illegible] Ins. Co(secured)				
5-21-76	Filed Dfts. Notice of Motion for an order Directing certain Discovery,etc. & Gov't produce dft. all evidence as indicated; bill of particulars & dismissing indictment & granting severance.				
05-21-76	Filed Remand.				
05-25-76	Filed Mag. Final Commitment.				
6-1-76	All Motions Rtn. Today June 1st are Adjourned to Jun 4th @2:00 P.M.				
6-3-76	Filed [illegible] of record of proceedings dated 4-29-76-10:30 A.M				
6-15-76	Filed Gov'ts Bill of Particulars.				
6-16-76	Filed Opinion #44678. The Gov'ts Memorandum of law 17 Matters with prepared to accede as to each dft. as indicated. The Gov't concession is made the order. of this court, & the Gov't is to forthwith comply therewith.....Owen J.(mailed notice)				
6-18-76	Filed Order that each dft. represented yb counsel who is appointed under Criminal Justice Act is authorized to retain investigation services & expend up to the statutory limit of $300.00 & dfts. may at their option retain the named investigator & apply their authorized moneys severally to his fee as allowed by this Court...Owen J.(mailed notice)				
6-30-76	Filed order that all voir dire Questions are to be submitted by 7-14-76 OWEN.J. m/n/.				
6-29-76	Filed Opinion #44673..Deft's John Capra, Steven Dellacave and Leoluca Guarino, are colledtively sever for a later trial. Beyond the foregoing, all motions to sever ar denied.OWEN.J.m/n.				
6-21-76	Surpression Held....Owen J.				
7-7-76	Filed Memorandum & order. It is ordered in the interests of justice, that the trial of this action is adjourned from 7-19-76 to 8/10/76,to begin at 10:00 a.m. in Courtroom 318 ....Owen J. (mailed notice)				

Cont'd.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

76 CR 324

A 3

Draft 5

DATE	PROCEEDINGS
	Page #3 Judge Owen
7-9-76	Filed Memorandum Order Trial has been adjourned to 8-10-76,proposed voir dire questions due 8-3-76 directly to Chambers....Owen J. (mailed notice)
7-15-76	Filed Opinion #44760. All Motions of Dfts. as moved for discovery & Inspection & bill of particulers, are denied. Certain dfts. moved for psychiartric information as indicated. The Foregoing is so Ordered......Owen J.,(mailed notice)
7-20-76	Filed transcript of record of proceedings, dated 5-6-76
7-20-76	Filed transcript of record of [illegible] 5-7-76
7-20-76	[illegible] of proceedings, dated 5-20-76
7-20-76	[illegible] proceedings, dated 5-10-76
7-16-75	Filed Opinion #44768.All motions seeking disclosure of Gov't witnesses are denied. Dfts. motions to disclose indentity of cooperating dfts.denied.Various Dfts. move to dismiss indictment on grounds of preindictment delay,motions denied.Movants seeking order enjoing Gov't from cross examining them about past record,any movant seeking this issue , hearing will be held on 7/21/76 in Room 318.All other motions denied as indicated........Owen J. (mailed notice)
7-20-76	Filed Opinion #44769. Gov't orderd to deliver in camera inspection as indicated. ....Owen J.(mailedm notice)
7-26-76	Filed Dfts. Affdvt in support of application to produce & permit to copy & inspect as indicate prior to trial.
8-9-76	All Counsel Present for P.T.C.
8-10-76	Trial Begun - Jury Selection begun - Interpreters Gustavo Hoffman & Anita Zevallos Sworn.
8-11-76	Jury Selection Cont'd.
8-12-76	Jury Selection Cont'd. Surpression hearing cont'd & concluded.
8-20-76	Filed True Copy of USCA Mandate, petition for a writ of mandamus together with motion for a stay is denied. (mn)
8-18-76	Trial Cont'd - Openings Cont'd
8-19-76	Trial Cont'd
8-20-76	Trial Cont'd
8-23-76	Trial Cont'd
8-24-76	Trial Cont'd
8-25-76	Trial Cont'd
8-26-76	Trial Cont'd
8-27-76	Trial Cont'd
8-30-76	Trial Cont'd
8-31-76	Trial Cont'd
9-1-76	Trial Cont'd
9-2-76	Trial Cont'd
9-3-76	Trial Cont'd
9-7-76	Trial Cont'd - Hearing Held concerning authority of tape 3505-05 concerning Dft. Intersome court finding:Tapes are original unaltered version.
9-8-76	Trial Cont'd
	(Cont'd)

A 4

76 CR 324 SEBASTIAN INTERSIMONE, ETC. Dft 5

PAGE#4

DATE	PROCEEDINGS
9-9-76	Trial Cont'd
9-10-76	Trial Cont'd
9-13-76	Trial Cont'd -
9-14-76	Filed Order that each counsel who is appointed under the Criminal Justice Act, is authorized to file an interim voucher for services rendered under the Criminal Justice Act from the date of their appointment up to & including 9/10/76, the actual trial having commenced on 8/10/76 & continuing & the assigned counsel may file a final voucher subsequent to the termination of trial as to their respective dfts. subject to the ultimate allowance of this court.....Owen J.(mn)
9-14-76	Trial Adj. to 9-15-76
9-15-76	Trial Cont'd
9-16-76	Trial Cont'd
9-17-76	Trial Cont'd
9-20-76	Trial Cont'd Jurer #10 is excused & replaced by Alt. #1.
9-21-76	Trial Cont'd
9-22-76	Trial Cont'd
9-23-76	Filed True Copy of USCA Mandate. District Court Order is Affirmed. Judgment Ent. 9-24-76 Clerk, Ent. 10-1-76, (mn)
10-8-76	Filed Gov'ts Application for an order of immunity as to Peter J. Fiumara, witness.
10-8-76	Filed Order that Peter J Fiumara give testimony & that any testimony etc. shall be subject to immunity provisions as indicated...This Order shall not take effect until Peter J. Fiumara refuses to testify as indicated......Owen J.(mn)
9-23-76	Trial Cont'd
9-24-76	Trial Cont'd
9-27-76	Trial Cont'd
9-28-76	Trial Cont'd
9-29-76	Trial Cont'd
9-30-76	Trial Cont'd
10-1-76	Trial Cont'd
10-4-76	Trial Adj.
10-5-76	Trial Cont'd
10-6-76	Trial Cont'd
10-7-76	Trial Cont'd
10-8-76	Trial Cont'd
10-12-76	Trial Cont'd - Gov't Rests - Motions
10-13-76	Trial Cont'd - Motions cont'd
10-14-76	Trial Cont'd
10-15-76	Trial Cont'd
10-18-76	" "
10-19-76	" "
10-20-76	Trial Adj. to 10-21-76.
10-21-76	Trial Cont'd - Gov't Summation begun...Owen J/
10-22-76	Summation Cont'd
10-25-76	" "
10-26-76	" "
10-27-76	" "
10-28-76	" "
10-29-76	" "
11-1-76	" "
11-2-76	" "
11-3-76	" " & concluded KK Gov'ts Rebuttal begun.

(Cont'd)

76CR 324

324 Sabastian Intersimone, etc. Dft.5

DATE	PROCEEDINGS Page 5
11-4-76	Gov't Rebuttal Cont'd.
11-12-76	Filed One Sealed Envelope - Dtd. 10-6-76. Ordered Sealed by the Court on this date.....Owen J.
11-12-76	Filed One Sealed Envelope - Dtd. 8-30-76. Ordeeed Sealed by the Court on this date.....Owen J.
11-12-76	Filed One Sealed Envelope - dtd. 11-4-76. Notes from Deliberating Jury. Ordered Sealed by the Court on this date.....Owen J.
11-12-76	Filed One Sealed Envelope - dtd. 8-13-76. Questions subm. to Court by counsel in jury selection. Ordered Sealed by the Court......Owen J
11-12-76	Filed One Evnelope Sealed. Dtd. 11-15-76. Ordered Sealed by the Court 10-6-76. ....Owen J.
11-12-76	P.S.I. Ordered for each dft. - Verdict - Sentencing date for all dfts. - Jan. 10,1977,,from 10:00 A.M. on - Dft. Ct. 1 & 2 - Guilty - Bail Revoked - Remanded. Owen J.
11-5-76	Trial Cont'd - Charge to Jury.
11-6-76	Charge Cont'd & Deliberations Begun.
11-7-76	Deliberations Cont'd
11-8-76	" "
11-9-76	" "
11-10-76	" "
11-11-76	" "
11-12-76	" " & Concluded.
11-17-76	Filed Redacted Indictment.
11-17-76	Filed Transcript of record of proceedings, dated Jun 1,2,3,4 & Jul. 1,2,12 & aug 10,11,12-12
11-17-76	Filed Transcript of record of proceedings, dated Aug 10,11,12,13-1976
11-17-76	Filed Transcript of record of proceedings, dated Aug 19,20,23,24-1976
11-17-76	Filed Transcript of record of proceedings, dated Aug 25,26,27,30-1976
11-17-76	Filed Transcript of record of proceedings, dated July 31 1976
11-17-76	Filed Transcript of record of proceedings, dated Sep 1,2,3,7,8-1976
11-17-76	Filed Transcript of record of proceedings, dated Sep 9,10,13,14,15-1976
11-17-76	Filed Transcript of record of proceedings, dated Sep 16,17,20,21,22-1976
11-17-76	Filed Transcript of record of proceedings, dated Sep 23,24,27,28,29-1976
11-17-76	Filed Transcript of record of proceedings, dated Sep 30-1976
11-17-76	Filed Transcript of record of proceedings, dated Oct 1,5,6,7,8-1976
11-17-76	Filed Transcript of record of proceedings, dated Oct 19,21,22,25,26-1976
11-17-76	Filed Transcript of record of proceedings, dated Oct 27,28,29-1976
11-12-76	Filed Transcript of record of proceedings, dated Nov 1,2,3,4-1976
12-23-76	Filed transcript of record of proceedings, dated 11-5,6,7,8,9,10,11,12-1976
1-4-77	Dft. Sebastian Intersimone Appears with his atty. David Keegen & makes motion for new counsel & adj. of Sentencing. Motion Granted & sentence scheduled for Jan 31st,1977 @10:00 A.M.....Owen J.
1-27-77	Filed Dfts. Notice of Motion & Affdvt. for order of Judgment of acquittal,New Trial,& names & address of jurors & alternate jurors,etc...Ret.1-31-77.
1-31-77	Filed Order to Show Cause permitting dfts atty. to inspect & copy sealed transcript of proceedings pages 4177 through 4193 of the trial transcript of 9/20/76....Ret, 1/31/77.
	~~Filed transcript of record of proceedings, dated 5 - 77~~

Page 6

DATE	PROCEEDINGS
1-31-77	Filed Judgment & Commitment (Atty. David Keegan Present) #72237 The Dft. is hereby committed to the custody of the atty. gen. or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Each of Counts 1 & 12, to run concurrently to each other. Pur. to T 21, Sec. 841, U.S. Code, the dft. is placed on Special Parole for a term of THREE (3) YEARS on Each of Counts 1 & 12 to run concurrently to each other & to commence upon his release from confinement. It is Adjudged, the dft. be Fined the sum of $25,000.00 on Count 1 to be paid or the dft. is to stand committed until the fine is paid or he is otherwise discharged according to law. The dft. is to remain at MCC for a period of THIRTY(30) DAYS from today........Owen J Issued Commitment 2-1-77
2-1-77	Filed Order that dft. be kept at the Metropolitan Correction Center for a continuous period of 30 days following the date of this .order.....Owen J.(mn)
2-4-76	/Filed Dfts. Notice of Appeal from judgment ent. 1-31-76.(mailed notice)
2-8-77	Filed True Copy of J&C with marshals ret. Dft. delivered to Warden, MCC, NY on 1-31-77.
2-9-77	Filed Transcript of proceeding dtd. 11-18-76.
2-17-77	Filed transcript of record of proceedings, dated 2-1-77
2-17-77	Filed transcript of record of proceedings, dated 1-4-77
2-17-77	Filed transcript of record of proceedings, dated 1-31-77
3/4/77	Filed Memo. End. on letter dtd. 2/28/77 from Paul B. Bergman % Ford Marrin Esposito Witmeyer & Bergman to Judge Owen, Re; Staying Dfts. transfer for 30 Days. Transfer is hereby stayed for an add'l 30 Days until April 1, 1977.... ..Owen J.(mailed notice)
3/11/77	Certified Record to the U.S.C.A.
3/23/77	Filed Govts. Affdvt. in opposition to dfts. motions for a post trial interrogation of the jury.
3/23/77	Filed Govts. Memorandum of Law.
3/25/77	Filed 3 Page Telegram from Dft. to Judge Owen dtd. 3/22/77. Dft. Discharges Paul B. Bergman & Thomas R. Espition of Ford Marrin Esposito Witmeyer & Bergman of 25 Bway as attys. as of March 20, 1977. Copies of Telegram was sent to all interested Parties.
4-11-77	Filed Govts. Sentencing Memorandum.
6-1-77	Filed transcript of record of proceedings, dated 3-8-77
6-1-77	Filed transcript of record of proceedings, dated 3-17-77
6-1-77	Filed transcript of record of proceedings, dated 3-24-77

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By G Harbison
Deputy Clerk

U.S. District Court
Filed
4-5-76
S.D. of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - :

JUAN ANTONIO ALVAREZ, a/k/a "Tony," :
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis," :
FRANK MOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a :
"Benny," a/k/a "Mr. B,"
JOHN CAPRA, a/k/a "Johnny Hooks," :
LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie," :
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch," :
JOSEPH SAMPSON, a/k/a "Bootnose,"
LOIS SAMPSON, :
ANN REYNOLDS, a/k/a "Lois's
Sister," :
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT, :
AL WILLIAMS, a/k/a "Big Al from
Chicago," :
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South :
Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe," :
TOMMY DAVIS, a/k/a "Bipty,"
BERNARD BRIGHTMAN, a/k/a "Nabe," :
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.," :
SOLON GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish :
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi," :
MARION DUNMORE, a/k/a "Shi's
Woman," a/k/a "Toni," :
ALBERT LEE JONES, a/k/a "Al from
Norfolk," :
HELEN KELLEM, a/k/a "Pam,"
JOHN P. MORGAN, a/k/a "J.P.," :
NELSON ALVAREZ, a/k/a "Tony's
Brother," :
EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's
Cousin," :

Defendants. :
- - - - - - - - - - - - - - - - - - - -x

INDICTMENT

76 Cr. 324

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1968, and continuously thereafter up to and including the date of the filing

A 8

of this indictment, in the Southern District of New York, and elsewhere,

JUAN ANTONIO ALVAREZ, a/k/a "Tony,"
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis,"
FRANK MOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a
"Benny," a/k/a "Mr. B,"
JOHN CAPRA, a/k/a "Johnny Hooks,"
LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie,"
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch,"
JOSEPH SAMPSON, a/k/a "Bootnose,"
LOIS SAMPSON,
ANN REYNOLDS, a/k/a "Lois's
Sister,"
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT,
AL WILLIAMS, a/k/a "Big Al from
Chicago,"
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South
Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe,"
TOMMY DAVIS, a/k/a "Bipty,"
BERNARD BRIGHTMAN, a/k/a "Nabe,"
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.,"
SOLON GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi,"
MARION DUNMORE, a/k/a "Shi's
Woman," a/k/a "Toni,"
ALBERT LEE JONES, a/k/a "Al from
Norfolk,"
HELEN KELLEM, a/k/a "Pam,"
JOHN P. MORGAN, a/k/a "J.P.,"
NELSON ALVAREZ, a/k/a "Tony's
Brother,"
EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's
Cousin,"

the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed together and with each other, to violate the narcotics laws of the United States, specifically, Sections 173, 174, 812, 841(a)(1) and 841(b)(1)(A), 951, 952 and 960 of Title 21, United States Code.

THE OBJECTS OF THE CONSPIRACY

2. It was part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amounts of narcotic drugs, specifically heroin and cocaine, from and through countries unknown in South America and other places, in violation of Sections 173, 174, 951, 952 and 960 of Title 21, United States Code.

3. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators, unlawfully, wilfully and knowingly would receive, conceal, keep, sell and facilitate the transportation, concealment and sale of narcotic drugs, specifically heroin and cocaine, after these narcotic drugs had been imported and brought into the United States contrary to law, knowing that these narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly, would distribute and possess with intent to distribute heroin and cocaine, which are classified under law as Schedule I and II narcotic drug controlled substances, in violation of Sections 812, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS AND CO-CONSPIRATORS TO ACCOMPLISH THE OBJECTS OF THE CONSPIRACY

5. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and insure the success of the unlawful venture to import, buy, sell and distribute narcotic drugs for profit, were the following:

(a) The conspiracy took the form of a loose-knit business organization with members of the conspiracy operating at three basic levels. At the first level, some of the defendants and co-conspirators served as importers and sources of supply of narcotic drugs. At the second level, other members of the conspiracy acted as middlemen, purchasing narcotic drugs, in wholesale quantities directly from the suppliers. In turn, these middlemen sold heroin and cocaine in multi-kilogram quantities to defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from sources of heroin and cocaine through middlemen, wholesalers and retailers and ultimately to narcotic addicts and users in New York City, Washington, D.C., Chicago, Illinois, Miami, Florida, and other cities in the United States.

(b) During the course of the said conspiracy the said defendants played the following roles in this conspiracy:

Importers and Sources of Supply

(1) Defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SURLDA, a/k/a "Luis," were importers and suppliers of cocaine, doing business in New York City and Miami, Florida, who between 1968 and 1974 sold approximately 70 kilograms of cocaine each year.

(2) Defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," was a supplier of heroin, doing business in New York City.

(3) Defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," were suppliers of heroin, doing business in New York City, who between 1970 and 1973 sold kilogram quantities of heroin each month.

Wholesale Middlemen

(4) John Brown, a/k/a "Jack," named herein as a co-conspirator, but not as a defendant, was a bulk purchaser of heroin and cocaine from the importers and sources of supply.

(5) Defendant FRANK MOTEN, a/k/a "Uncle," was an advisor to John Brown, a/k/a "Jack," delivered narcotic drugs to Brown and received drugs from him, introduced certain defendants and co-conspirators to Brown for the purpose of purchasing drugs, vouched for them as reliable persons, financed the narcotic operations of several of the defendants and co-conspirators, engaged in financial dealings for Brown and other of the defendants and co-conspirators, and shared in the profits of the conspiracy.

(6) Defendant MICHAEL PARKER delivered narcotic drugs on several occasions to several of the defendants and co-conspirators.

Wholesale Traffickers

(7) Defendants WILLIAM HIGHTOWER, SIDNEY FOSTER, a/k/a "Chinch," JOSEPH SAMPSON, a/k/a "Bootnose,"and LOIS SAMPSON, purchased and resold kilogram quantities of heroin and cocaine while doing business in Washington, D.C. and New York City.

(8) Defendants YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD purchased and resold kilogram quantities of heroin and cocaine while doing business in Chicago, Illinois, Miami, Florida and New York City.

(9) Defendants DON [illegible], a/k/a "Don from South Carolina," JAMES [illegible], a/k/a "[illegible] the Babe," TOMMY DAVIS, a/k/a "Bipty," BERNARD BRICKMAN, a/k/a "Nabe," JOHN MORRIS, a/k/a "Papers," LAURENCE MITCHELL, a/k/a "L.J.," SOLON GLAZE, a/k/a "Solo," RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a "Little Michael," CHARLES COWPERS, a/k/a "Shi", MARION DUNMORE, a/k/a Shi's Woman," a/k/a "Toni," ALBERT LEE JONES, a/k/a "Al from Norfolk", HELEN KELLEM, a/k/a "Pam", ANN REYNOLDS, a/k/a "Lois's Sister," and JOHN P. MORGAN, a/k/a "J.P.," purchased and resold kilogram quantities of cocaine and, with respect to certain of the defendants and co-conspirators, heroin while doing business in New York City and, in certain cases, in various cities in New Jersey.

Other Defendants

(10) Defendants NELSON ALVAREZ, a/k/a Tony's Brother," built secret compartments in various locations in Florida where he and his brother, defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," hid large amounts of cocaine and money related to narcotics transactions.

(11) Defendants NELSON ALVAREZ, a/k/a "Tony's Brother," EDUARDO YAUJAR, a/k/a "Angelo's Uncle," and LAZARO YAUJAR, a/k/a "Angelo's Cousin," picked up money as payment for narcotics and delivered it to defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," and ANGEL RODRIGUEZ, a/k/a "Angelo."

(12) Other co-conspirators, not named herein as defendants, served respectively during the course of the said conspiracy as suppliers of narcotic drugs and as purchasers and resellers of narcotic drugs, in various cities in the United States.

(c) The importers, wholesalers and retailers of heroin and cocaine who were the members of this conspiracy knew that their actions were inextricably linked to and aided by the actions of co-conspirators and, because of the scope of the venture, knew that others were involved in the performance of functions vital to the overall success of the business. Accordingly, each level of the operation depended for its success upon the existence of the others.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. In and about October, 1968, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

2. Thereafter, in and about November, 1968, the defendants SOLON GLAZE, a/k/a "Solo," LAWRENCE MITCHELL, a/k/a "L.J.," JOHN MORRIS, a/k/a "Papers" and JOSEPH SAMPSON a/k/a "Bootnose" purchased cocaine in New York, New York.

3. In and about 1968, the defendants AL WILLIAMS, a/k/a "Big Al from Chicago," DONALD O'DOOD, and another person purchased approximately three kilograms of heroin in New York, New York.

4. In and about March or April, 1969 the defendants ANGEL RODRIGUEZ, a/k/a "Angelo," and LUIS SUREDA, a/k/a "Luis," sold approximately 20 kilograms of cocaine in New York, New York.

5. In and about 1969 the defendant SIDNEY FOSTER a/k/a "Chinch," traveled to New York approximately four times each month to pick up eighth-kilogram quantities of heroin and cocaine for the defendant WILLIAM HIGHTOWER.

6. In and about [illegible], the defendant FRANK MOTEN, a/k/a "Uncle," received large amounts of money in New York City.

7. In and about February, 1970, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," had a conversation in Madison Square Garden in New York City.

8. In and about October 1970, the defendants FRANK MOTEN, a/k/a "Uncle," JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," WILLIAM HIGHTOWER, TOMMY DAVIS, a/k/a "Bipty," JOSEPH SAMPSON, a/k/a "Bootnose," LOIS SAMPSON, and MICHAEL PARKER, met in Atlanta, Georgia.

9. In and about May, 1971, the defendant FRANK MOTEN, a/k/a "Uncle," delivered money to the defendant SOLON GLAZE, a/k/a "Solo", to be used in the purchase of narcotics.

10. In and about 1971 the defendant FRANK MOTEN, a/k/a "Uncle," delivered money to the defendant JOHN MORRIS, a/k/a "Papers", to be used in the purchase of narcotics.

11. In and about the Fall of 1971 the defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," sold approximately four kilograms of heroin in New York, New York.

12. Thereafter, in and about the Fall of 1971, the defendants WILLIAM HIGHTOWER, JOSEPH SAMPSON, a/k/a "Bootnose," and LOIS SAMPSON, purchased heroin in New York, New York.

13. In and about the fall of 1971, the defendants JUAN ANTONIO ALVAREZ , a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

14. In and about November, 1971, the defendant [illegible], a/k/a "[illegible]," purchased approximately one kilogram of cocaine in New York, New York.

15. In and about December 1971, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," sold approximately three kilograms of heroin to the defendants YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD, in New York City for $27,000 per kilogram.

16. In and about March or April, 1972, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," delivered a quantity of heroin in New York, New York.

17. In and about June, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," had a telephone conversation with another person.

18. In and about September, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," told another person that he would be responsible for all debts arising from the cocaine purchases of the defendant BERNARD BRIGHTMAN, a/k/a "Nabe."

19. In and about September, 1972, the defendant BERNARD BRIGHTMAN, a/k/a "Nabe," purchased approximately one-eighth kilogram of cocaine in New York, New York.

20. In and about September, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," sold approximately one kilogram of cocaine in New York, New York.

21. In and about October, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," sold approximately one kilogram of cocaine in New York, New York.

22. In and about November, 1972, the defendant DON WILSON, a/k/a "Don from South Carolina," received a approximately ten kilograms of cocaine in Orangeburg, New York.

23. In and about December, 1972, the defendant LOIS SAMPSON received approximately one kilogram of cocaine in Orangeburg, New York.

24. In and about December, 1972, the defendant ANN REYNOLDS, a/k/a "Lois's Sister," received approximately one kilogram of cocaine in Orangeburg, New York.

25. In and about January, 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 18 kilograms of cocaine in New York, New York.

26. In and about January, 1973, the defendant BERNARD BRIGHTMAN, a/k/a "Nabe," received a quantity of cocaine in Orangeburg, New York.

27. In and about 1973, the defendant LOIS SAMPSON delivered approximately three-eighths kilogram of cocaine to the defendant WILLIAM HIGHTOWER in Washington, D.C.

28. In and about February, 1973, the defendant LAWRENCE J. MITCHELL, a/k/a "L.J.," received approximately one kilogram of cocaine in New York, New York.

29. In and about February, 1973, the defendant CHARLES COUPERS, a/k/a "Shi," received approximately one-eighth kilogram of cocaine in New York, New York.

30. On or about April 13, 1973, the defendant STEVEN DELLACAVA, a/k/a "Beansie," agreed to deliver one kilogram of heroin in New York, New York.

31. On or about April 13, 1973 the defendant STEVEN DELLACAVA, a/k/a "Beansie," had in his possession approximately $14,000.

32. In and about April, 1973, the defendants FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," received approximately one-half kilogram of cocaine at 135 West 96th Street, New York, New York.

33. In and about the summer of 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a, "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York City.

34. Thereafter, in and about the summer or fall of 1973, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 12 kilograms of cocaine in New York, New York.

35. In and about February, 1974, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony" and ANGEL RODRIGUEZ, a/k/a "Angelo" sold approximately 18 kilograms of cocaine in Miami, Florida.

36. In and about February or March, 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 10 kilograms of cocaine in Miami, Florida.

37. In and about February or March, 1974, the defendants FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," purchased approximately 2 kilograms of cocaine in Miami, Florida.

38. In and about March or April, 1974, the defendant DON WILSON, a/k/a "Don from South Carolina," purchased approximately one kilogram of cocaine in Miami, Florida.

39. In and about March or April, 1974, the defendant MICHAEL PARKER purchased cocaine in Miami, Florida.

40. In and about April or May, 1974, the defendants, JUAN ANTONIO ALVAREZ, a/k/a "Tony" and ANGEL RODRIGUEZ, a/k/a "Angelo," sold approximately 20 kilograms of cocaine in Miami, Florida.

41. In and about April or May, 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 14 kilograms of cocaine in Miami, Florida.

42. In and about May 1974, the defendant DON WILSON a/k/a "Don from South Carolina," met with the defendant MICHAEL PARKER and another person in Miami, Florida.

43. In and about May and June, 1974, the defendant MICHAEL PARKER sold cocaine to the defendants WILLIAM HIGHTOWER and SIDNEY FOSTER, a/k/a "Chinch," in Washington, D.C.

44. In and about July or August, 1974, the defendant YVONNE ALVAREZ SCHENNAULT traveled to Miami, Florida.

45. In and about the Fall of 1974, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," and ANGEL RODRIGUEZ, a/k/a "Angelo," sold approximately 20 kilograms of cocaine in Miami, Florida.

46. In and about the Fall of 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 15 kilograms of cocaine in Miami, Florida.

47. In and about March, 1975, the defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," had a conversation with another person.

(Title 21, United States Code, Sections 173, 174, 846, 963.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, JUAN ANTONIO ALVAREZ, a/k/a "Tony," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts Four, Five, Six and Seven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," occupied a position of organizer, supervisor and manager, and from which continuing series of violations the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841 (b)(1)(A) as alleged in Counts Eight, Nine, Ten and Eleven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant FRANK MOTEN, a/k/a "Uncle," occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant, FRANK MOTEN, a/k/a "Uncle," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT FOUR

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA a/k/a "Luis" the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

In and about October, 1972, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 18 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In and about the Summer of 1972, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812
841(a)(1) and 841(b)(1)(A); Title 18, United
States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about October, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

CO[illegible]

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT ELEVEN

The Grand Jury further charges:

In and about April, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B.," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTEEN

The Grand Jury further charges:

In and about December, 1971, in the Southern District of New York, JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO, STEVEN DELLACAVA, a/k/a "Beansie," YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago" and DONALD O'DOOD, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FOURTEEN

The Grand Jury further charges:

In and about March or April, 1972, in the Southern District of New York, JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO, and STEVEN DELLACAVA, a/k/a "Beansie," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FIFTEEN

The Grand Jury further charges:

In and about April, 1972, in the Southern District of New York, YVONNE ALVAREZ SCHENNAULT, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIXTEEN

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, AL WILLIAMS a/k/a "Big Al From Chicago," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-quarter kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SEVENTEEN

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, AL WILLIAMS, a/k/a "Big Al From Chicago," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHTEEN

The Grand Jury further charges:

In and about November, 1972, in the Southern District of New York, DON WILSON, a/k/a "Don from South Carolina," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 10 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINETEEN

The Grand Jury further charges:

In and about the fall of 1972, in the Southern District of New York, WILLIAM HIGHTOWER, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY

The Grand Jury further charges:

In and about January, 1972, in the Southern District of New York, WILLIAM HIGHTOWER, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, Schedule I and II narcotic drug controlled substances to wit, approximately one-eighth kilogram of heroin and one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-ONE

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, WILLIAM HIGHTOWER, and SIDNEY FOSTER, a/k/a "Chinch," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-TWO

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, WILLIAM HIGHTOWER and LOIS SAMPSON, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately three-eighths kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-THREE

The Grand Jury further charges:

In and about May, 1973, in the Southern District of New York, WILLIAM HIGHTOWER, SYDNEY FOS[illegible], a/k/a "C[illegible]" and MICHAEL PALMER, the defendants, unlawfully, intentionally, and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

COUNT TWENTY-FOUR

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, JOSEPH SAMPSON, a/k/a "Bootnose" and LOIS SAMPSON, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-FIVE

The Grand Jury further charges:

In and about June, 1972 in the Southern District of New York, JOSEPH SAMPSON, a/k/a "Bootnose," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-SIX

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, LOIS SAMPSON, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-SEVEN

The Grand Jury further charges:

In and about December, 1972 in the Southern District of New York, ANN REYNOLDS, a/k/a Lois' sister, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-EIGHT

The Grand Jury further charges:

In and about May, 1971, in the Southern District of New York, TOMMY DAVIS a/k/a "Bipty," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-NINE

The Grand Jury further charges:

In and about December, 1971, in the Southern District of New York, TOMMY DAVIS, a/k/a "Bipty," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-quarter kilogram of cocaine.

(Title 21, United States Code, Sections
812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, JAMES LANE, a/k/a "[illegible] the Robe," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-ONE

The Grand Jury further charges:

In and about May, 1971 in the Southern District of New York, SOLON CLAZE, a/k/a "Solo," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-TWO

The Grand Jury further charges:

In and about May, 1971, in the Southern District of New York, JOHN MORRIS, a/k/a "Papers," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-THREE

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, J.P. MORGAN, a/k/a "J.P." the defendant, unlawfully, intentionally and knowingly did possess drug controlled substance, to wit, approximately 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-FOUR

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, LAWRENCE J. MITCHELL, a/k/a "L.J." the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-FIVE

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, MARION DUNMORE, a/k/a "Toni," a/k/a "Shi's Woman," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-SIX

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, CHARLES COWPERS, a/k/a "Shi," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-SEVEN

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, ALBERT LEE JONES, a/k/a "Al from Norfolk," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-EIGHT

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, HELEN KELLEM, a/k/a "Pam," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-NINE

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a "Little Michael," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately eight ounces of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT FORTY

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a, "Little Michael," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately [illegible] ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

s/ Clara L Watson
Foreman

s/ Robert B. Fiske, Jr
ROBERT B. FISKE, JR.
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By M. Russo
Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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REDACTED INDICTMENT

PRESENTED TO JURY

UNITED STATES OF AMERICA :

A 32

-v- :

INDICTMENT

76 Cr. 324

47 overt Acts
30 Counts

U.S. DISTRICT COURT
FILED
NOV 17 1976
S.D. OF N.Y.

JUAN ANTONIO ALVAREZ, a/k/a "Tony,":
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis,"
FRANK HOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a :
"Benny," a/k/a "Mr. B."
JOHN CAPRA, a/k/a "Johnny Hooks," :
LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie," :
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch," :
JOSEPH SAMPSON, a/k/a "Bootnose,"
LOIS SAMPSON, :
ANN REYNOLDS, a/k/a "Lois's
Sister," :
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT, :
AL WILLIAMS, a/k/a "Big Al from
Chicago," :
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South :
Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe," :
TOMMY DAVIS, a/k/a "Bipty,"
BERNARD BRIGHTMAN, a/k/a "Nabe," :
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.," :
SOLON GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish :
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi," :
MARION DUNMORE, a/k/a "Toni,"
ALBERT LEE JONES, a/k/a "Al from :
Norfolk,"
HELEN KELLEM, a/k/a "Pam," :
JOHN P. MORGAN, a/k/a "J.P.,"
NELSON ALVAREZ, a/k/a "Tony's :
Brother,"
EDUARDO YAUJAR, a/k/a "Angelo's" :
Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's :
Cousin,"

Defendants. :

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COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1968, and continuously thereafter up to and including the date of the filing

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of this indictment, in the Southern District of New York, and elsewhere,

JUAN ANTONIO ALVAREZ, a/k/a "Tony,"
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis,"
FRANK MOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a
    "Benny," a/k/a "Mr. B,"
JOHN CAPRA, a/k/a "Johnny Hooks,"
LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie,"
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch,"
JOSEPH SAMPSON, a/k/a "Bootnose,"
LOIS SAMPSON,
ANN REYNOLDS, a/k/a "Lois's
    Sister,"
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT,
AL WILLIAMS, a/k/a "Big Al from
    Chicago,"
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South
    Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe,"
TOMMY DAVIS, a/k/a "Bipty,"
BERNARD BRIGHTMAN, e/k/a "Nabe,"
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.,"
SOLON GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi,"
MARION DUNMORE, a/k/a "Toni,"
ALBERT LEE JONES, a/k/a "Al from
    Norfolk,"
HELEN KELLEM, a/k/a "Pam,"
JOHN P. MORGAN, a/k/a "J.P.,"
NELSON ALVAREZ, a/k/a "Tony's
    Brother,"
EDUARDO YAUJAR, a/k/a "Angelo's
    Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's
    Cousin,"

the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed together and with each other, to violate the narcotics laws of the United States, specifically, Sections 173, 174, 812, 841(a)(1) and 841(b)(1)(A), 951, 952 and 960 of Title 21, United States Code.

THE OBJECTS OF THE CONSPIRACY

THE OBJECTS OF THE CONSPIRACY

2. It was part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amount of narcotic drugs, specifically heroin and cocaine, from and through countries unknown in South America and other places, in violation of Sections 173, 174, 951, 952 and 960 of Title 21, United States Code.

3. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators, unlawfully, wilfully and knowinlgy would receive, conceal, keep, sell and facilitate the transportation, concealment and sale of narcotic drugs, specifically heroin and cocaine, after these narcotic drugs had been imported and brought into the United States contrary to law, knowing that these narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly, would distribute and possess with intent to distribute heroin and cocaine, which are classified under law as Schedule I and II narcotic drug controlled substances, in violation of Sections 812, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS AND CO-CONSPIRATORS TO ACCOMPLISH THE OBJECTS OF THE CONSPIRACY

5. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and insure the success of the unlawful venture to import, buy, sell and distribute narcotic drugs for profit, were the following:

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(a) The conspiracy took the form of a loose-knit business organization with members of the conspiracy operating at three basic levels. At the first level, some of the defendants and co-conspirators served as importers and sources of supply of narcotic drugs. At the second level, other members of the conspiracy acted as middlemen, purchasing narcotic drugs, in wholesale quantities directly from the suppliers. In turn, these middlemen sold heroin and cocaine in multi-kilogram quantities to defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from sources of heroin and cocaine through middlemen, wholesalers and retailers and ultimately to narcotic addicts and users in New York City, Washington, D.C., Chicago, Illinois, Miami, Florida, and other cities in the United States.

(b) During the course of the said conspiracy the said defendants played the following roles in this conspiracy:

Importers and Sources of Supply

(1) Defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," were importers and suppliers of cocaine, doing business in New York City and Miami, Florida, who between 1968 and 1974 sold approximately 70 kilograms of cocaine each year.

(2) Defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," was a supplier of heroin, doing business in New York City.

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(3) Defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," were suppliers of heroin, doing business in New York City, who between 1970 and 1973 sold kilogram quantities of heroin each month.

Wholesale Middlemen

(4) John Brown, a/k/a "Jack," named herein as a co-conspirator, but not as a defendant, was a bulk purchaser of heroin and cocaine from the importers and sources of supply.

(5) Defendant FRANK MOTEN, a/k/a "Uncle," was an advisor to John Brown, a/k/a "Jack," delivered narcotic drugs to Brown and received drugs from him, introduced certain defendants and co-conspirators to Brown for the purpose of purchasing drugs, vouched for them as reliable persons, financed the narcotic operations of several of the defendants and co-conspirators, engaged in financial dealings for Brown and other of the defendants and co-conspirators, and shared in the profits of the conspiracy.

(6) Defendant MICHAEL PARKER delivered narcotic drugs on several occasions to several of the defendants and co-conspirators.

Wholesale Traffickers

(7) Defendants WILLIAM HIGHTOWER, SIDNEY FOSTER, a/k/a "Chinch," JOSEPH SAMPSON, a/k/a "Bootnose," and LOIS SAMPSON, purchased and resold kilogram quantities of heroin and cocaine while doing business in Washington, D.C. and New York City.

(8) Defendants YVONNE ALVAREZ CHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD purchased and resold kilogram quantities of heroin and cocaine while doing business in Chicago, Illinois, Miami,Florida and New York City.

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(9) Defendants DON WILSON, a/k/a "Don from South Carolina," JAMES LAWS, a/k/a "Tobe the Robe," TOMMY DAVIS, a/k/a "Bipty," BERNARD BRIGHTMAN, a/k/a "Nabe," JOHN MORRIS, a/k/a "Papers," LAWRENCE MITCHELL, a/k/a/ "L.J.," SOLON GLAZE, a/k/a "Solo," RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a "Little Michael," CHARLES COWPERS, a/k/a "Shi," MARION DUNMORE, a/k/a "Toni," ALBERT LEE JONES, a/k/a "Al from Norfolk," HELEN KELLEM, a/k/a "Pam," ANN REYNOLDS, a/k/a "Lois's Sister," and JOHN P. MORGAN, a/k/a "J.P.," purchased and resold kilogram quantities of cocaine and, with respect to certain of the defendants and co-conspirators, heroin while doing business in New York City and, in certain cases, in various cities in New Jersey.

Other Defendants

(10) Defendant NELSON ALVAREZ, a/k/a "Tony's Brother," built secret compartments in various locations in Florida where he and his brother, defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," hid large amounts of cocaine and money related to narcotics transactions.

(11) Defendants NELSON ALVAREZ, a/k/a "Tony's Brother," EDUARDO YAUJAR, a/k/a "Angelo's Uncle," and LAZARO YAUJAR, a/k/a "Angelo's Cousin," picked up money as payment for narcotics and delivered it to defendants JUAN ANTONIO ALVAREZ, a/k/a/ "Tony," and ANGEL RODRIGUEZ, a/k/a "Angelo."

(12) Other co-conspirators, not named herein as defendants, served respectively during the course of the said conspiracy as suppliers of narcotic drugs and as purchasers and resellers of narcotic drugs, in various cities in the United States.

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(a) The importers, wholesalers and retailers of heroin and cocaine who were the members of this conspiracy knew that their actions were inextricably linked to and aided by the actions of co-conspirators and, because of the scope of the venture, knew that others were involved in the performance of functions vital to the overall success of the business. Accordingly each level of the operation depended for its success upon the existence of the others.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. In and about October, 1968, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

2. Thereafter, in and about November, 1968, the defendants SOLON GLAZE, a/k/a "Solo," LAWRENCE MITHCELL, a/k/a "L.J.," JOHN MORRIS, a/k/a "Papers," and JOSEPH SAMPSON a/k/a "Bootnose," purchased cocaine in New York, New York.

3. In and about 1968, the defendants AL WILLIAMS, a/k/a "Big Al from Chicago," DONALD O'DOOD, and another person purchased approximately three kilograms of heroin in New York, New York.

4. In and about March or April, 1969 the defendants ANGEL RODRIGUEZ, a/k/a "Angelo," and LUIS SUREDA, a/k/a "Luis," sold approximately 20 kilograms of cocaine in New York, New York.

5. In and about 1969 the defendant SIDNEY FOSTER a/k/a "Chinch," traveled to New York approximately four times each month to pick up eighth-kilogram quantities of heroin and cocaine for the defendant WILLIAM HIGHTOWER.

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6. In and about 1969, the defendant FRANK MOTEN, a/k/a "Uncle," received large amounts of money in New York City.

7. In and about February, 1970, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," had a conversation in Madison Square Garden in New York City.

8. In and about October 1970, the defendants FRANK MOTEN, a/k/a "Uncle," JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," WILLIAM HIGHTOWER, TOMMY DAVIS, a/k/a "Bipty," JOSEPH SAMPSON, a/k/a "Bootnose," LOIS SAMPSON, and MICHAEL PARKER, met in Atlanta, Georgia.

9. In and about May, 1971, the defendant FRANK MOTEN, a/k/a "Uncle," delivered money to the defendant SOLON GLAZE, a/k/a "Solo," to be used in the purchase of narcotics.

10. In and about 1971 the defendant FRANK MOTEN, a/k/a "Uncle," delivered money to the defendant JOHN MORRIS, a/k/a "Papers," to be used in the purchase of narcotics.

11. In and about the Fall of 1971 the defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," sold approximately four kilograms of heroin in New York, New York.

12. Thereafter, in and about the Fall of 1971, the defendants WILLIAM HIGHTOWER, JOSEPH SAMPSON, a/k/a "Bootnose," and LOIS SAMPSON, purchased heroin in New York, New York.

13. In and about the fall of 1971, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

14. In and about November, 1971, the defendant JAMES LAWS, a/k/a "Tobe the Robe," purchased approximately one kilogram of cocaine in New York, New York.

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15. In and about December 1971, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," sold approximately three kilograms of heroin to the defendants YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD, in New York City for $27,000 per kilogram.

16. In and about March or April, 1972, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," delivered a quantity of heroin in New York, New York.

17. In and about June, 1972 the defendant FRANK MOTEN, a/k/a "Uncle," had a telephone conversation with another person.

18. In and about September, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," told another person that he would be responsible for all debts arising from the cocaine purchases of the defendant BERNARD BRIGHTMAN, a/k/a "Nabe."

19. In an about September, 1972, the defendant BERNARD BRIGHTMAN, a/k/a "Nabe," purchased approximately one-eighth kilogram of cocaine in New York, New York.

20. In and about September, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," sold approximately one kilogram of cocaine in New York, New York.

21. In and about October, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," sold approximately one kilogram of cocaine in New York, New York.

22. In an about November, 1972, the defendant DON WILSON, a/k/a "Don from South Carolina," received approximately ten kilograms of cocaine in Orangeburg, New York.

23. In and about December, 1972, the defendant LOIS SAMPSON received approximately one kilogram of cocaine in Orangeburg, New York.

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24. In and about December, 1972, the defendant ANN REYNOLDS, a/k/a "Lois's Sister," received approximately one kilogram of cocaine in Orangeburg, New York.

25. In and about January, 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 18 kilograms of cocaine in New York, New York.

26. In and about January, 1973, the defendant BERNARD BRIGHTMAN, a/k/a "Nabe," received a quantity of cocaine in Orangeburg, New York.

27. In and about 1973, the defendant LOIS SAMPSON delivered approximately three-eighths kilogram of cocaine to the defendant WILLIAM HIGHTOWER in Washington, D.C.

28. In and about February, 1973, the defendant LAWRENCE J. MITCHELL, a/k/a "L.J.," received approximately one kilogram of cocaine in New York, New York.

29. In and about February, 1973, the defendant CHARLES COWPERS, a/k/a "Shi," received approximately one-eighth kilogram of cocaine in New York, New York.

30. On or about April 13, 1973, the defendant STEVEN DELLACAVA, a/k/a "Beansie," agreed to deliver one kilogram of heroin in New York, New York.

31. On or about April 13, 1973 the defendant STEVEN DELLACAVA, a/k/a "Beansie," had in his possession approximately $14,000.

32. In and about April, 1973, the defendants FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," received approximately one-half kilogram of cocaine at 135 West 96th Street, New York, New York.

33. In and about the summer of 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York City.

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34. Thereafter, in and about the summer or fall of 1973, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 12 kilograms of cocaine in New York, New York.

35. In and about February, 1974, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony" and ANGEL RODRIGUEZ, a/k/a "Angelo" sold approximately 18 kilograms of cocaine in Miami, Florida.

36. In and about February or March, 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 10 kilograms of cocaine in Miami, Florida.

37. In and about February or March, 1974, the defendants FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," purchased approximately 2 kilograms of cocaine in Miami, Florida.

38. In and about March or April, 1974, the defendant DON WILSON, a/k/a "Don from South Carolina," purchased approximately one kilogram of cocaine in Miami, Florida.

39. In and about March or April, 1974, the defendant MICHAEL PARKER purchased cocaine in Miami, Florida.

40. In and about April or May, 1974, the defendants, JUAN ANTONIO ALVAREZ, a/k/a "Tony" and ANGEL RODRIGUEZ, a/k/a "Angelo," sold approximately 20 kilograms of cocaine in Miami, Florida.

41. In and about April or May, 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 14 kilograms of cocaine in Miami, Florida.

42. In and about May 1974, the defendant DON WILSON a/k/a "Don from South Carolina," met with the defendant Michael Parker and another person in Miami, Florida.

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43. In and about May and June, 1974, the defendant MICHAEL PARKER sold cocaine to the defendants WILLIAM HIGHTOWER and SIDNEY FOSTER, a/k/a "Chinch," in Washington, D.C.

44. In and about July or August, 1974, the defendant YVONNE ALVAREZ SCHENNAULT traveled to Miami, Florida.

45. In and about the Fall of 1974, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," and ANGEL ROGRIGUEZ, a/k/a "Angelo," sold approximately 20 kilograms of cocaine in Miami, Florida.

46. In and about the Fall of 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 15 kilograms of cocaine in Miami, Florida.

47. In and about March, 1975, the defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," had a conversation with another person.

(Title 21, United States Code, Sections 173, 174
846, 963.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, JUAN ANTONIO ALVAREZ, a/k/a "Tony," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts Four,

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Five, Six and Seven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," occupied a position of organizer, supervisor and manager, and from which continuing series of violations the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts Eight, Nine, Ten and Eleven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant FRANK MOTEN, a/k/a "Uncle," occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant, FRANK MOTEN, a/k/a "Uncle," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

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COUNT FOUR

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA a/k/a "Luis" the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

In and about October, 1972, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionallly and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 18 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

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COUNT SEVEN

The Grand Jury further charges:

In and about the Summer of 1973, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 341(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about October, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TEN

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT ELEVEN

The Grand Jury further charges:

In and about April, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B.," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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COUNT THIRTEEN

The Grand Jury further charges:

In and about December, 1971, in the Southern District of New York, JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO, STEVEN DELLACAVA, a/k/a "Beansie," YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago" and DONALD O'DOOD, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FOURTEEN

The Grand Jury further charges:

In and about April, 1973, in the Southern District of New York, YVONNE ALVAREZ SCHENNAULT, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIFTEEN

The Grand Jury further charges:

In and about November, 1972, in the Southern District of New York, DON WILSON, a/k/a "Don from South Carolina," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 10 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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COUNT SIXTEEN

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, WILLIAM HIGHTOWER, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SEVENTEN

The Grand Jury further charges:

In and about January, 1972, in the Southern District of New York, WILLIAM HIGHTOWER, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, Schedule I and II narcotic drug controlled substances to wit, approximately one-eighth kilogram of heroin and one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHTEEN

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, WILLIAM HIGHTOWER, and SIDNEY FOSTER, a/k/a "Chinch," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT NINETEEN

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, WILLIAM HIGHTOWER and LOIS SAMPSON,

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the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately three-eighths kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, JOSEPH SAMPSON, a/k/a "Bootnose" and LOIS SAMPSON, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-ONE

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, LOIS SAMPSON, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-TWO

The Grand Jury further charges:

In and about May, 1971, in the Southern District of New York, TOMMY DAVIS, a/k/a "Bipty," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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COUNT TWENTY-THREE

The Grand Jury further charges:

In and about December, 1971, in the Southern District of New York, TOMMY DAVIS, a/k/a "Bipty," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-quarter kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-FOUR

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, JAMES LAWS, a/k/a "Tobe the Robe," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-FIVE

The Grand Jury further charges:

In and about May, 1971, in the Southern District of New York, JOHN MORRIS, a/k/a "Papers," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-SIX

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, J.P. MORGAN, a/k/a "J.P." the defendant, unlawfully, intentionally and knowingly did possess

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with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-SEVEN

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, LAWRENCE J. MITCHELL, a/k/a "L.J." the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-EIGHT

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, CHARLES COWPERS, a/k/a "Shi," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-NINE

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, RAPHAEL BONILLA, a/k/a "Spanish

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Michael," a/k/a, "Little Michael," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately eight ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a, "Little Michael," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately ten ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

/s/ CLARA L. WATSON
Foreman

/s/ ROBERT B. FISKE, JR.
ROBERT B. FISKE, JR.
United States Attorney

76 CR 324

[illegible] States District Court
[illegible] NEW YORK

[illegible] STATES OF AMERICA

[illegible]

INDICTMENT

[illegible] Sections 173, 174 [illegible] Title 21, United [illegible] Sections 812, 841(a)(1) [illegible] Title 18, United [illegible] Section 2.

[illegible]
United States Attorney

A TRUE BILL

THE UNITED STATES OF AMERICA

vs.

JUAN ANTONIO ALVAREZ, a/k/a
"Tony", et al.,
Defendants,

INDICTMENT

In violation of Title 21, United States Code, Sections 173, 174, 846, 963 and 848; Title 21, United States Code, Sections 812, 841 (a) (1 and 841 (b) (1) (A); Title 18 United States Code, Section 2.

ROBERT B. FISKE, JR.
United States Attorney

A TRUE BILL

IB:kco

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JUAN ANTONIO ALVAREZ, et al.,

Defendants.

BILL OF PARTICULARS

76 Cr. 324 (RO)

The United States of America as and for its Bill of Particulars alleges:

(A) With respect to Count One of the Indictment, the Overt Acts occurred at the following time, date and location:

1. At approximately 8:30 or 9:00 P. M. in or about October, 1968, at 60 Riverside Drive, New York, New York.

2. During various days in and about November, 1968, at 60 Riverside Drive, New York, New York.

3. Sometime during a day in and about the latter part of November or in December, 1968, at 159 West 53rd Street.

4. During a day in or about March or April, 1969, at 60 Riverside Drive, New York, New York.

5. At approximately 12 noon, on numerous occasions, as specified in Overt Act No. 5, during 1969, at 180 West End Avenue, and at a Greek restaurant located at 56th Street and Ninth Avenue, New York, New York.

6. On several occasions during the day in 1969, at 180 West End Avenue, in New York, New York, and at 2069 Seventh Avenue, New York, New York.

7. At night, during the Joe Frazier-Jimmy Ellis boxing match at Madison Square Garden, 33rd Street and Seventh Avenue, New York, New York.

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8. During a day, in October 1970, the day of the Muhammed Ali-Jerry Quarry boxing match, at the Regency-Hyatt Hotel, Atlanta, Georgia.

9. On numerous occasions in 1971, at 155 West 68th Street, New York, New York, and at 2069 Seventh Avenue, New York, New York and an apartment in the west 90's between Central Park West and Columbus Avenue, New York, New York, and at 481 North Woodland Avenue, New Jersey.

10. On several occasions in 1971 and 1972, at 2069 Seventh Avenue, at an apartment on Broadway and 108th Street, at 155 West 68th Street in New York, New York, and at 481 North Woodland Avenue, Englewood, New Jersey.

Denny ✓

11. During a day in about September, 1971, at 180 West End Avenue, New York, New York.

12. During various days in the Fall of 1971 at 180 West End Avenue, and at a hotel on 42nd Street near Broadway, in New York, New York.

13. At approximately 9:30 P. M. in the Fall of 1971 at 346 West 56th Street, New York, New York.

14. During a day in November, 1971, at 180 West End Avenue, New York, New York

15. Between approximately 1:30 A. M. and 7:30 A. M., in the early morning of a day in December, 1971, in the vicinity of 346 West 56th Street, New York, New York.

16. During a night in March, 1972, in the vicinity of 200 West 90th Street.

17. At various times in June, 1972, with Willie Womack. Tape recordings of these conversations are available for inspection.

18. At approximately 6 P. M. in and about a day in September 1972, either at 2069 Seventh Avenue or on the way to 481 North Woodland Street, Englewood, New Jersey.

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19. At approximately 7 P. M. on a day in and about September, 1972, at 481 North Woodland Street, Engelwood, New Jersey.

20. During a night in and about September, 1972, at 200 West 90th Street, New York, New York.

21. During a night, in and about October, 1972, at 200 West 90th Street, New York, New York.

22. During a day, in November, 1972, at 168 Cowpens Drive, Orangeburg, New York.

23. During a day in December, 1972, at 168 Cowpens Drive, Orangeburg, New York.

24. During a day in December, 1972, at 168 Cowpens Drive, Orangeburg, New York.

25. During a day in January, 1973, at 168 Cowpens Drive, Orangeburg, New York, and at the Sheraton Motor Inn, 42nd Street and 12th Avenue, New York, New York.

26. During a day in January, 1973, at 168 Cowpens Drive, Orangeburg, New York.

27. During a day in January, 1973, in Washington, D. C. or in Silver Spring, Maryland.

28. During a day in February, 1973, at 168 Cowpens Drive, Orangeburg, New York.

29. During an evening in and about February, 1973, at 135 West 96th Street, New York, New York.

30. Early in the night [illegible] on or about April 13, 1973, at 135 West 96th Street, New York, New York.

31. During the night of April 13, 1973 , at 135 West 96th Street. Correct $14,000 to $20,000.

32. Early one afternoon, in the latter part of April, at 135 West 96th Street, New York, New York.

33. During a night in July or August 1973, at Pennsylvania Station in New York City and at 2828-28th Street, Brooklyn, New York.

34. During a day in August, 1973, at 2828-28th Street, Brooklyn, New York.

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35. During a day in the latter part of February, 1974, at 18257 N. W. 23rd Avenue, Miami, Florida.

36. On or about February 28, 1974, at 18257 N. W. 23rd Avenue, Miami, Florida.

37. On or about March 2, 1974, during the day at 100 Lincoln Road, Miami Beach, Florida.

38. On or about April 3, 1974, during the night, in the vicinity of 2051 Le Jeune Road, Coral Gables, Florida.

39. On or about April 4, 1974, during the evening, at 1201 Le Jeune Road, Miami, Florida.

40. During a day, in early May, 1974, in the vicinity of 671 N. E. 83rd Street, Miami, Florida.

41. During the night, in the first part of May, 1974, approximately eight blocks from 679 N. W. 79th Street.

42. On or about May 10, 1974, during the night, at 1201 Le Jeune Road, Miami, Florida.

43. On various dated in May and June 1974, at 2733 Hillcrest Heights, Maryland and 4206 East Capitol Street, Washington, D. C.

44. On or about July 31, 1974, from Chicago, Illinois, to Miami, Florida.

45. In or about the first week in September, 1974, at 666 N. W. 83rd Terrace, Miami, Florida.

46. During the night on or about September 10, 1974 at 120 Biscayne Boulevard, Miami, Florida.

47. On or about March 30, 1975; the defendant Intersimone was at his home, Upper Whitfield Road, Accord, New York.

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B. With respect to Count Two of the Indictment, the defendant Juan Antonio Alvarez occupied a position of organizer, supervisor or manager with respect to the following individuals:

1. Nelson Alvarez acquited
2. Angelo Rodriguez convicted
3. Luis Sureda Co-operated
4. Eduardo Yaujar nolle Prossed
5. Lazaro Yaujar " "
6. Nathan Mizrachi not tried c̄ us
7. John T. Brown co-conspirator, not defendant. Co-op.

C. With respect to Count Three of the Indictment the defendant Frank Moten occupied a position of organizer, supervisor or manager with respect to the following individuals:

1. Bernard Brightman hung jury
2. Solon Glaze severed
3. John Morris convicted
4. Lawrence Mitchell convicted.
5. Willie Womack Deceased, not indicted
6. William Davis a/k/a Bubba not indicted
7. John T. Brown co-op. unindicted co-conspirator

D. With Respect to Counts Three through Forty of the Indictment, the Overt Acts occurred at the following time, date and location:

Count	Particulars
4	See A (13) above.
5	During a day in and about October, 1972 at 135 West 96th Street, New York, New York.
6	See A (25)
7	See A (33)
8	See A (18)
9	See A (21)
10	See A (26)
11	See A (32)

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Count	Particulars
12	See A (11)
13	See A (15)
14	See A (16)
15	Correct 1972 to 1973. This is a typographical error. During a day in April, 1973, at 200 West 90th Street, New York, New York.
16	During a day in November, 1971, at 180 West End Avenue, New York, New York.
17	In and about September 15, 1972 at 200 West 90th Street, New York, New York.
18	See A (22)
19	See A (12)
20	In the first part of January, 1972 at 180 West End Avenue, New York, New York.
21	During a day in December, 1972, at 200 West 90th Street, New York, New York.
22	See A (27)
23	During a night in May, 1973, at 135 West 96th Street, New York, New York
24	See A (12)
25	During a day in June, 1972, at 180 West End Avenue, New York, New York.
26	See A (23)
27	See A (24)
28	During a day in the first or second week of May, 1971, at 180 West End Avenue, New York, New York
29	During a day in December, 1972, at 180 West End Avenue. New York, New York
30	See A (14)

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Count	Particulars
31	During a day in May, 1971 at 180 West End Avenue, New York, New York
32	During a day in May, 1971, at 180 West End Avenue, New York, New York
33	During a night in September, 1972 at or in the vicinity of 200 West 90th Street, New York, New York.
34	See A (28)
35	During a day in the Fall of 1971 at 180 West End Avenue, New York, New York.
36	See A (29)
37	During a day in November, 1971 at 180 West End Avenue, New York, New York.
38	During a day in December, 1972, at the defendant Kellem's apartment at 157 West 123rd Street, New York, New York.
39	During a night in December 1972, at 640 West 139th Street, New York, New York.
40	During a night in December 1972 at 640 West 39th Street, New York, New York.

E. The following were co-conspirators with the above-named defendants:

C. B. Atkins not indicted or called as witness
William Davis, a/k/a "Bubba" not indicted witness for Frank [illegible]
Willie Womack DECEASED
Louise James " c̄ womack
Jan Brown NOT INDICTED, OR CALLED AS WITNESS
Joanne Brown " JODY. " " "
Carol Cuffee " " " " "
Iraida Perez " " " " "
Sandra Perez " " " " "
Harry Schennault " " " " "
Connie Garett " " " " "
Jane Doe, a/k/a Tobe's Woman " " "
Alphonse V. Sisca DIFFERENT CASE
Martin Di Saverio SISCA'S FATHER IN LAW

BEFORE J. OWEN
INDICTMENT # →

DID TIME IN ATLANTA c̄ JACK BROWN.

DJB:kco

Joseph Malizia ?

Antonio Perdiz, a/k/a Fillipino Tony

James Richardson

Dated: New York, New York

June 14, 1976.

Yours, etc.,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007

By: ______________________
DANIEL J. BELLER
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

NOTICE OF MOTION

- against -

76 Cr. 324 (R.O.)

JUAN ANTONIO ALVAREZ, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - -x

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of DAVID V. KEEGAN, duly sworn to the 21st day of May, 1976, the Indictment, and all of the proceedings heretofore had herein, the undersigned will move this Court, on behalf of the defendant, SEBASTIAN INTERSIMONE, before the Honorable Richard Owen, United States District Judge for the Southern District of New York, at the United States Courthouse, Foley Square, City and County of New York for the following relief:

I. FOR AN ORDER DIRECTING CERTAIN DISCOVERY AND INSPECTION PURSUANT TO RULE 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

II. FOR AN ORDER REQUIRING THE GOVERNMENT TO PRODUCE AND DELIVER TO THE DEFENDANT ALL EVIDENCE FAVORABLE TO HIM UNDER THE AUTHORITY OF BRADY -v- MARYLAND, 373 U.S. 83 (1963).

III. FOR AN ORDER GRANTING A BILL OF PARTICULARS PURSUANT TO RULE 7 (f) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

IV. FOR AN ORDER DISMISSING THE INDICTMENT AS TO SEBASTIAN INTERSIMONE OR IN THE ALTERNATIVE GRANTING A SEVERANCE AS TO SEBASTIAN INTERSIMONE.

Dated: Garden City, New York
May 21st, 1976.

Yours, etc.,

McCOYD & KEEGAN
Attorneys for the Defendant
SEBASTIAN INTERSIMONE

1000 Franklin Avenue
Garden City, New York 11530
Tel: (516) 248-1860

TO: Hon. Robert B. Fiske, Jr.
United States Attorney for the
Southern District of New York
One St. Andrews Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

UNITED STATES OF AMERICA

- against -

AFFIDAVIT

JUAN ANTONIO ALVAREZ, et al.,

Defendants.

- -x

STATE OF NEW YORK) ss.:
COUNTY OF NASSAU)

DAVID V. KEEGAN, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York, with offices at 1000 Franklin Avenue, Garden City, New York.

2. I represent SEBASTIAN INTERSIMONE who is charged in two Counts of a forty count indictment with conspiracy to violate the narcotics laws of the United States in violation of Title 21, United States Code, Sections 173, 174, 846 and 963 (Count One) and possession with intent to distribute heroin in violation of Title 21, United States Code, Sections 812, 841 (a) (1) and 841 (b) (1) (A) (Count Twelve).

3. This affidavit is made in support of the defendant's motions for discovery and inspection; for the production of exculpatory material pursuant to *Brady* -v- *Maryland*, 373 U.S. 83 (1963); for a bill of particulars and for an order dismissing the indictment as to Sebastian Intersimone or in the

alternative an order severing the case against Sebastian Intersimone and ordering a separate trial as to the defendant.

4. On May 8th, 1976, your deponent met with the Assistant United States Attorney charged with the prosecution of this case to seek agreement on a number of items of discovery pursuant to local Rule 3 of this Court. That meeting resulted in agreement on several requested items and the agreement is embodied in the letter annexed hereto as Exhibit "A." Your deponent will only request additional items as to which agreement could not be reached so as not to burden the Court with frivolous requests.

DISCOVERY AND INSPECTION

5. In Item 2 of Exhibit "A" the Government consents to provide only "relevant written or recorded statement [of the defendant] within the possession custody or control of the Government, the existence of which is known by the attorneys for the Government prosecuting this case." Rule 16 (a) (1) (A) is broader than the discovery consented to in that discovery of statements is not limited to statements within the possession, custody or control of the Government but extends to statements the existence of which "may become known" by the "exercise of due diligence." Furthermore, the limitation that the existence of the statement be known to "the attorneys for the Government prosecuting this case," finds no support in the statute and is wholly unwarranted. In a different context, the Supreme Court has held that "the prosecutor's office in an entity" (see

Giglio v. United States, 405 U.S. 150, 154 (1972). The Government cannot evade its responsibilities under the rules by switching cases to prosecutors who are unaware of illegalities, irregularities or outright violations of a defendant's constitutional rights by the claim that the prosecutor at trial was unaware of the defects in the investigation. [see generally, Santobello -v- New York, 404 U.S. 257 (1971); see also United States -v- Morell, 524 F.2d 550 (2d Cir. 1975) (Friendly C.J. concurring and dissenting); and United States -v- Sperling, 506 F.2d 1323, 1333 (2d Cir. 1974) cert. denied, 420 U.S. 962 (1975)].

Also on the subject of the defendant's statements, the Government has consented in Item 8 of Exhibit "A" to disclose to counsel whether his client was the subject of, or recorded on electronic surveillance "as known to the attorneys prosecuting this case." Here again the limitation is unwarranted for the reasons stated above.

It is therefore the defendant's request that the Court order the Government to exercise due diligence including an "all agency search" to discover and produce for the defendant copies of all "written or recorded statements within the possession, custody or control of the government," Rule 16 (a) (1) (A), whether obtained directly from the defendant or by consensual recording or wiretapping in which the defendant was overheard or was the "subject" of such surveillance, and, if wiretaps were employed, to make copies of orders and affidavits, logs and transcripts, authorizations and requests for authorization relating to such surveillance available to the defendant.

6. Continuing on the issue of the defendant's statements, the Government has not consented to produce "the substance of oral statements which the Government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent" as required by Rule 16 (a) (1) (A). The defendant has known that unindicted co-conspirators Jackie Brown, a/k/a Jack Jordan, Jan Brown, a/k/a Jan Jordan, Marion Laird and Frank Stewart have been government informants for some 18 months or 2 years preceding this indictment. The defendant therefore requests that the substance of any oral statement made by him to those persons be produced.

7. In addition to recorded statements of the defendant resulting from electronic surveillance in which the defendant was the subject of, or recorded on, said surveillance, the defendant requests discovery of all recordings in which any alleged member of the conspiracy, whether indicted or unindicted, was overheard, whether the government intends to offer the recording or not. This is required in order for the defendant to meet any allegations or remarks on such recordings wherein he is named or mentioned, which would be offered to prove his involvement in the conspiracy under the hearsay exception applicable to the conspiracy count. Such discovery is necessary now even as to tapes the government does not intend to offer, to determine whether such tapes contain exculpatory material or material which should be heard by the jury

to explain or clarify any tapes which the government does intend to offer. Furthermore, the defendant needs time to prepare his own transcript of tape recordings either where he disputes the Government's transcript or where the Government has not prepared a transcript. Thus the defendant requests copies of all tape recordings of all conversations of all defendants and unindicted co-conspirators made during the investigation of this case. The defendant further requests copies of all orders, affidavits, logs and transcripts, authorizations and requests for authorization of said recordings. This request includes, but is not limited to, the so-called "Capra tapes" [see United States -v- Capra, 501 F.2d 267 (2nd Cir. 1974) cert. denied, 420 U.S. 990 (1975)] and the "Willie Womack tapes," used in United States -v- Levy, a case tried in the District of New Jersey.

8. The government has limited its consent to produce scientific tests to "laboratory analyses of narcotics, handwriting, fingerprints and ballistics." Rule 16 (a) (1) (D) contains no such limitation and the Court should expand the list to include "all scientific tests and experiments made in connection with the case," including, but not limited to, those named above and physical and mental examinations, particularly psychiatric examinations of government witnesses, and voice print analyses.

9. The defendant requests that the Court order the government to supply a list of government witnesses but not addresses unless the government can present a compelling case

for non-disclosure. Since there are 33 defendants and forty counts charging a conspiracy and substantive crimes committed over an eight year period, it is imperative that the defendant, who is after all presumed innocent, be given a chance to defend himself by interviewing prospective government witnesses who may testify against him, providing those witnesses are willing to be interviewed. In Mr. Intersimone's case, the substantive count (Count Twelve) is alleged to have occured in the Fall of 1971. Mr. Intersimone cannot be expected to be able to account for his whereabouts and every person he spoke to during approximately three months some five years ago. Without a witness list, Mr. Intersimone cannot prepare an effective defense but has to rely on his own testimony to exculpate himself. No defendant should be placed in such a position. See generally United States -v- Baum, 482 F.2d 1325, 1331-32 (2d Cir. 1973). As to those witnesses who are presently in Federal custody or under Federal control, the defendant requests the Court to fix a date and place for an interview of them by the defendant. United States -v- Tramunti, 73 Cr. 1099, (J. Duffy).

10. The defendant assumes that the material which the government has consented to produce pursuant to Rule 16 (a) (1) (C), (See Exhibit "A" Item 7), includes all checks, money orders, bank books, correspondence, telephone bills, records of long distance calls, airplane tickets, credit card records and receipts, hotel register cards, passports, applications for passports, automobile registrations, loan documents, and income tax returns signed by the defendant, written by the defendant or on his behalf, or claimed to relate to the

defendant in any manner will be made available to defendant, whether obtained directly from the defendant by seizure or from others by subpoena or turned over voluntarily. To the extent that the government has these items or other papers or documents relating to the defendant in its possession, custody or control and does not consent to make them available to the defendant, the defendant requests the Court to order the government to do so because the items are material to the defendant's preparation of his defense.

Brady Material

11. The defendant requests that the Court order the government to turn over to him all medical and psychiatric reports of all prospective government witnesses or where such reports are unavaible, the names and addresses of all treating physicians and hospital, sanitariums or rest homes where government witnesses have received treatment under the authority of Brady -v- Maryland, 373 U.S. 83 (1963).

12. The government has consented in Exhibit "A," Item 6, to make available copies of photographs and "spreads" shown to witnesses prior to trial. Under Brady -v- Maryland, supra the defendant requests that the government provide names and addresses of persons interviewed during the course of this investigation, who were unable to identify the defendant, or who misidentified the defendant, and who will not be called as witnesses, and copies of any notes or memoranda of interviews of said persons.

13. The defendant requests the Court to order the government to make available all statements obtained by any

law enforcement agency from individuals with knowledge of the facts of this case whom the government does not intend to call on its case-in-chief. United States -v- Marshak, 364 F. Supp. 1005 (S.D.N.Y. 1973).

BILL OF PARTICULARS

1. The defendant moves pursuant to Rule 7 (f) of the Federal Rules of Criminal Procedure for an Order directing the United States Attorney to serve and file a Bill of Particulars herein setting forth the following particulars:

a. State the last date upon which any act in furtherance of the conspiracy was performed by any of the conspirators, whether named in the indictment or not;

b. State where, other than in the Southern District of New York, the conspirators agreed with each other to violate the law as set forth in Count One;

c. State the date, time and place of the overt acts set forth in Count One. United States -v- Burgio, supra; United States -v- Crisona, 271 F.Supp. 150 (S.D.N.Y. 1967).

d. State the date, time and place where the defendant allegedly distributed and possessed the narcotic drug in count 12. United States -v- Burgio, supra.

e. The name of the person or persons to whom the narcotic drug was transferred. United States -v- Tucker, 262 F.Supp. 305 (S.D.N.Y. 1966); United States -v- Glaze, 313 F.2d 757 (2d Cir., 1963); United States -v- Acarino, 270 F.Supp. 526 (E.D.N.Y., 1967).

f. State whether such transferees are, or were at the time, directly or indirectly employed by the government, city, state or federal.

g. State who first transferred the narcotic drug to the defendant.

h. State whether the transferee named in response to (g) above or his agents were acting at the instance of the government at the time of the alleged transfer.

i. State the names and addresses of witnesses to whom the defendant allegedly made incriminating statements during the conspiracy and subsequent thereto.

j. State the amount of consideration given for the transfer in Count 12.

k. State the names and addresses of the witnesses the Government contends were present at the trnasfer in Count 12. *Will* -v- *United States*, 389 U.S. 90 (1967).

l. List all overt acts not listed in the indictment on which the prosecution will rely. *United States* -v- *Pilnick*, supra.

m. State whether the Government contends that the defendant, INTERSIMONE, is charged as a principal or an aider and abettor in Count 12.

n. State when the Government contends that the defendant, INTERSIMONE, joined the conspiracy. *United States* -v- *Tramunti*, 73 Cr. 1069 (J. Duffy).

o. State the means employed by the defendant in Count 12 to distribute and possess a drug.

MOTIONS ADDRESSED TO THE INDICTMENT

The defendant Sebastian Intersimone moves for an order dismissing Count One, because it charges multiple conspiracies, and granting a severance as to the defendant Intersimone. The defendant requests a severance whether the motion to dismiss is granted or not. The basis for the defendant's motion is that the government as is its practice has lumped together at least two and perhaps many more conspiracies which the proof at trial will show. Whether this is labeled a "fatal variance" or "prejudicial misjoinder" is of no great moment because the effect of trying this case under the theory that there is only one conspiracy involved will have the following effect: It will deny the defendant a fair trial; it will require the defendant to suffer the emotional and financial drain associated with a six to eight week trial in which only a miniscule portion of the testimony will relate to his guilt or innocence; it will involve the Court in hundreds of unnecessary hair spliting decisions regarding the question of which defendants co-conspirator's statements are admissible against; it will require a charge to the jury which will be difficult if not impossible to frame correctly so as not to prejudice any defendant; it will waste the time of the Court and the Government and the appellate courts; and it will undoubtedly result in reversals and dismissals or new trials if convictions are obtained. I do not make these statements lightly, and I believe an analysis of the indictment and the recent cases dealing with the issues will convince the Court of the folly of permitting the Government to proceed against all these defendants simultaneously.

THE INDICTMENT

(A 7-81)

The indictment is a 25-page document, naming 33 defendants, all but five of whom are alleged to have an alias or aliases. The conspiracy allegedly covers the period January 1, 1968 to April 5, 1976 and contains 47 overt acts. Under the heading "Importers and Sources of Supply," Mr. Intersimone is identified as a "supplier of heroin doing business in New York City." In Overt Act 11, Mr. Intersimone is alleged to have sold four kilograms of heroin in the Fall of 1971. This "sale" apparently forms the basis for Count Twelve, the only other count in which Mr. Intersimone is named. The only other mention of Mr. Intersimone occurs in Overt Act 47 wherein it is alleged that Mr. Intersimone had a conversation with another person in March, 1975.

The 47 Overt Acts consist of 29 Acts relating to cocaine in the total amount of approximately 211 kilograms; 6 Acts relating to heroin in the total amount of 11 kilograms; 1 Act which mentions both heroin and cocaine; and 11 Acts which mention neither drug.

The 40 substantive counts consist of 35 counts relating to cocaine and 5 counts relating to heroin.

Other alleged importers and suppliers of heroin in addition to Mr. Intersimone are Capra, Guarino and Dellacava, who significantly enough are listed separately from Mr. Intersimone, showing the absence of a connection between Mr. Intersimone and the other three defendants even in the government's mind. The three named above are also alleged to have done business in New York City.

The only other importers and suppliers named are not suppliers of heroin, but of cocaine--Juan Antonio Alvarez, Angel Rodriguez and Jose Luis Subeda, who are from Miami but are alleged to have done business in New York City and Miami.

While the Court's task would be simplified if the Government were to provide a flow chart showing the chain of distribution, areas of operation and relationships between the members of the conspiracy, even a perfunctory review of the indictment reveals that 18 of the 33 defendants are named either in Overt Acts or substantive counts as dealing in cocaine only. They are Alvarez, Rodriguez, Sureda, Glaze, Mitchell, Morris, Brightman, Moten, Wilson, Cowpers, Parker, Davis, Laws, Morgan, Dunmore, Jones, Kellum and Bonilla.

Another six defendants are mentioned only in connection with heroin: Williams, O'Dood, Intersimone, Capra, Guarino and Dellacava.

Of the remaining nine defendants, six are alleged to have dealt to some extent in both heroin and cocaine. Five of these are apparently from the Washington, D.C. area: Sidney Foster, William Hightower, Lois Sampson, Joseph Sampson and Ann Reynolds.

The remaining defendant, who allegedly dealt in both drugs, is from Chicago: Yvonne Schennault.

The other three defendants were allegedly members of the Miami-based cocaine connection. They are Nelson Alvarez, Eduardo Yaujar and Lazaro Yaujar.

A flow chart constructed from the government's allegations in the indictment would look something like this:

New York

INTERSIMONE

CAPRA
GUARINO
DELLACAVA

HEROIN
ONLY

JACK BROWN
FRANK MOTEN
MICHAEL PARKER

MIDDLEMEN

CHICAGO

SCHENNAULT
WILLIAMS
O'DOOD

WASHINGTON, D.C.

HIGHTOWER
S. FOSTER
J. SAMPSON
L. SAMPSON
REYNOLDS

MIAMI

J. ALVAREZ
RODRIGUEZ
SUREDA

N. ALVAREZ
E. YAUJAR
L. YAUJAR

COCAINE
SUPPLIERS

It is clear the government alleges that the Miami connection sold heroin both in Miami and in New York. Schennault is alleged to have purchased (with others) three kilograms of heroin in New York and some cocaine in New York and in Miami. The Washington group allegedly purchased both heroin and cocaine in New York and Intersimone and the "Capra group" sold a very limited quantity of heroin in New York, separately. There is no allegation whatever that Intersimone ever had dealings with the Miami group, the Washington group, the Chicago group, the "Capra group" or the so-called middlemen. He is not alleged to have anything to do with cocaine. In fact, the only allegation is that he once in the Fall of 1971 sold three kilograms of heroin to some unnamed person.

Even were the government to prove all its allegations, it would be quite apparent that what was occuring between 1968 and 1976 was the termination of a New York-based conspiracy or conspiracies to distribute heroin and the evolution of a new conspiracy or conspiracies involving some members of the old conspiracy (excluding Intersimone) to deal in cocaine. It is as clear as it can be at this stage that there is not one single conspiracy but two or more and there is no reason in law or logic to permit the government to try this case as if there were only one conspiracy.

But this is not a new problem, the Court of Appeals has been warning the government against this type of indictment since it decided United States -v- Borelli, 336 F.2d 376 (2d Cir. 1964). In United States -v- Sperling, 506 F.2d 1323 (2d Cir. 1974), the same sort of approach was used to try the Pacelli and Sperling groups as participants in one conspiracy. The Court briefly summarized the relationship between the groups:

> "At the hub of the conspiracy were Vincent Pacelli, Jr. and Sperling. Each had at his command the services of others and the sources and outlets for narcotics. Each caused narcotics to be bought, processed and sold. Pacelli had good sources of cocaine; he sold it to Sperling for resale to Sperling's customers. Sperling had good sources of heroin, he sold it to Pacelli for resale to Pacelli's customers. The evidence showed that each of the 11 appellants had a specific role in the conspiracy." (Id. at 1330).

While recognizing the "admittedly symbiotic aspects of the relationship between the Pacelli and Sperling organizations," which the government emphasized in an effort to justify its decision to try the members of the two groups together, the Court nevertheless stated:

> "It would have been much wiser for the government to have tried the appellants in two separate actions, one incorporating those linked with the Pacelli group and the other incorporating those linked with Sperling." (Id. at 1341 f. 25.)

And that statement was made in the face of the fact that the chief government witness, Lipsky, gave evidence against members of both groups.

The Court then went on to warn the government against continuing to file the type of indictment under consideration here:

> "In view of the frequency with which the single conspiracy vs. multiple conspiracies claims is being raised on appeals before this court, see United States v. Rizzo, 491 F.2d 1235 (2 Cir. 1974); United States v. DeMarco, 488 F.2d 828 (2 Cir. 1973); United States v. Mapp, 476 F.2d 67 (2 Cir. 1973), we take this occasion to caution the government with respect to future prosecutions that it may be unnecessarily exposing itself to reversal by continuing the indict-

> ment format reflected in this case. While it is obviously impractical and inefficient for the government to try conspiracy cases one defendant at a time, it has become all too common for the government to bring indictments against a dozen or more defendants and endeavor to force as many of them as possible to trial in the same proceeding on the claim of a single conspiracy when the criminal acts could be more reasonably regarded as two or more conspiracies, perhaps with a link at the top. Little time was saved by the government's having prosecuted the offenses here involved in one rather than two conspiracy trials. On the contrary, many serious problems were created at the trial level, including the inevitable debate about the single conspiracy charge, which can prove seriously detrimental to the government itself. We have already alluded to our problems at the appellate level, where we have had to comb through a voluminous record to give adequate consideration to the claims of eleven separate appellants." (Id. at 1340-41).

The Court of Appeals again warned the government against this type of indictment format in United States -v- Miley, 513 F.2d 1191, 1205-1207 (2d. Cir. 1975). Finally, conceding that nothing short of a reversal was going to persuade the government to heed its warnings, the Court reversed the convictions of the defendants in United States -v- Bertolotti, 529 F.2d 149 (2d. Cir. 1975). In that case the Court stated:

> "Under the guise of its single conspiracy theory, the Government subjected each of the seven appellants to voluminous testimony relating to unconnected crimes in which he took no part. Appellants Bertolotti, Thompson and Camperlingo, active participants in the "Florida quartet" deal, but in no way tied in with any of the other conspiracies nor shown to have dealt with Rossi, Coralluzzo or their associates on any prior or subsequent occasion, were forced to sit through weeks of damaging testimony on the acquisition and distribution of the Flynn cocaine and the cash thefts from Matthews, Harrison and Lucas. Appellants DeLuca and Angley, concededly in-

> volved in the Flynn transaction, were likewise subjected to a deluge of evidence relating to at least three other conspiracies in which they played no role. Because of their overlapping involvement in more than one of the proven conspiracies, the prejudice to appellants Capotorto and Guerra is less glaring. [Citations ommited]. We, nevertheless, find clear evidence of prejudice to these two as well. Criminal they may have been, but their guilt did not permit violation of their "right not to be tried en masse for the conglomeration of distinct and separate offenses committed by others." Kotteakos v. United States, supra, 328 U.S. at 775, 66 S.Ct. at 1253." [atend] Id. at 157-158.

Even if the government is not wise enough to heed the repeated warnings of the Court of Appeals, this Court should not allow itself to be led into reversible error by trying the indictment as it is presently drafted. The Court can and should demand that the government show how this case differs from the Sperling case and if the government fails or refuses to do so, the Court should at least break up the trial into the Miami-based cocaine conspiracy; New York-based heroin conspiracy; the Chicago customers; and the Washington, D.C. customers. This could be done pursuant to Rule 8 and Rule 14 F.R.Cr.P.

A further dividing line could be established between the two alleged suppliers of heroin in New York, Intersimone on one hand and Capra, Guarino and Dellacava because even if the Government were ablalto prove that the defendant Intersimone sold three kilograms of heroin in the Fall of 1971, it does not follow that, therefore, Intersimone was part of the larger conspiracy involving the other "suppliers." Criticizing just such a broad view of conspiracy, Judge Hand stated:

> "At times it seemed to be supposed that once some kind of criminal concert is established, all parties are liable for everything anyone of the original participants does, and even for what those do who join later. Nothing could be more untrue." *United States v. Peoni*, 100 F.2d 401, 403 (2d Cir. 1938).

It is probably more convenient for the Government to try all of the defendants together, although even this judgment is far from certain. See *United States -v- Sperling*, *supra* at 1340-41; *United States -v- Agueci*, 310 F.2d 817 (2d Cir. 1962) *cert. denied*, 372 U.S. 959 (1963). But, in any event, fairness to the defendants must override questionable considerations of Government convenience. A joint trial of the defendant Intersimone and the other defendants would prejudice him in two distinct ways: First, the evidence of large scale drug dealing among some of the defendants is inevitably bound to be held against him on the guilty by association theory. Second, Intersimone would be subjected to the substantial expense and personal trauma of sitting through a lengthy trial when the proof against him would probably take no more than a day or two.

The *Kotteakos* and prejudicial joinder issues in this case have been injected by the Government in the face of a clear warning from the Court of Appeals in *United States -v- Sperling*, *supra*. It is submitted that this Court should obviate these problems as far as the defendant Intersimone is concerned by granting a dismissal of the Indictment as to him or by granting a severance.

MISCELLANEOUS MOTIONS

Aliases

The defendant Intersimone moves to strike the aliases following his name and the aliases of all other defendants as surplusage pursuant to Rule 7 (d) F.R.Cr.P. It is elementary that all defendants are equal in the eyes of the law, yet aliases seem to be a "necessary" part of indictments only when drug cases are charged. It is equally obvious that John Mitchell, former attorney general of the United States, was not indicted as "the big enchilada" or "the big fish." Considerations of equal treatment under the law demand that the accused here be accorded the same courtesy and fairness. This will not prejudice the government because it will still be permitted to prove the use of an alias at trial if it is relevant to the case.

The Means

Paragraphs 5 through 12 contain the government's theory which has yet to be proved. Under the guise of showing "the means," the government has inserted prejudicial and inflammatory surplusage which should be striken. For example, the government labels the defendant Intersimone as a "supplier of heroin" under the heading "Importers and Sources of Supply." That sort of allegation is commonly inserted in an indictment so that the government can issue a press release which explains the case to the public. It may serve some legitimate law enforcement purpose at that stage, but it is highly prejudicial and unseemly for a Court to read that "allegation" to a jury before there has been one iota of evidence offered to support it. The government will not be prejudiced if the matter is striken since it will be able to argue that "allegation" to the jury if the evidence warrants such an argument.

The defendant Intersimone must reserve motions to suppress illegally obtained evidence, tapes and recordings obtained through illegal means, in-court identification testimoney, and statements, and any other appropriate motions, until he has been granted the discovery requested and consented to.

Finally, the defendant Intersimone joins in all motions made on behalf of all other defendants.

Sworn to before me this
21st day of May, 1976.

S/
DAVID V. KEEGAN

S/
Notary Public

ANDREA RIVA GIANFELICE
NOTARY PUBLIC, State of New York
No. 4623565
Qualified in Nassau County
Commission Expires [illegible]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

- v - : 76 Cr. 324 (RO)

JUAN ANTONIO ALVAREZ, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

GOVERNMENT'S MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS' MOTIONS FOR DISCOVERY, BILL OF PARTICULARS, SEVERANCE, AND OTHER RELIEF

Preliminary Statement

This memorandum of law is submitted in support of the Government's position in response to pre-trial motions made by the defendants in the above-captioned case, scheduled for argument on June 1, 1976.

Because of the number of motions, many of which overlap, because some of the motions are frivolous and insubstantial while others require some discussion, and because the Government will consent to some of the motions, this memorandum is organized as follows:

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IV. Discussion of Severance and Other Motions

A. The Motions For A Severance Should Be Denied

Each of the defendants has requested a severance and several have requested a continuance. These motions should be denied.

The defendant Moten asks for a severance in part based on a claim that co-defendants on trial would otherwise testify in Moten's behalf. Although more than a month has elapsed since the arrest in this case, counsel states she has not had time to present affidavits of co-defendants. Moten's claim for a severance on this ground should be denied.

The most frequently articulated argument for a severance is that the proof at trial will show multiple conspiracies, that the proof of such multiple conspiracies will prejudice the defendants and that a severance pretrial should be granted. Each defendant points to United States v. Sperling, 506 F.2d 1323 (2d Cir. 1974); United States v. Miley, 513 F.2d 1191 (2d Cir. 1975), and most recently United States v. Bertolotti, 529 F.2d 149 (2d Cir. 1975) as the basis for the claim of severance.

If, as the defendants assert, a severance would be justified if the proof at trial showed discrete, separate conspiracies it is also true that if the proof justifies a finding by the jury of a single conspiracy then a severance should not be granted. United States v. Bynum, supra, at 497; United States v. Arroyo, 494 F.2d 1316, 1318-19 (2d Cir. 1974). The Government submits that the Government's proof at trial will overwhelmingly establish a single conspiracy.

The indictment charges a single course of dealing involving the defendants between 1968 and the present. Certain defendants assert that a single conspiracy cannot embrace both cocaine and heroin, as is alleged in this case. United States v. Bynum, 485 F.2d 490 (2d Cir. 1973), however, is only one example of a leading case holding directly to the contrary. Indeed, in that case the Court of Appeals made clear that the Government is not required to prove that alternate sources of supply of narcotic drugs know each other before they may be charged in the same conspiracy. Bynum, incidentally, has been upheld in United States v. Tramunti, 513 F.2d 1087 (2d Cir. 1975), and other post-Sperling cases. Thus, for example, a defendant's claim that he knows only a handful of other defendants is totally beside the point.

The established rule in this Circuit is that a defendant

> "must demonstrate substantial prejudice from a joint trial, not just a better chance of acquittal at a separate one, and that a trial court's refusal to grant a severance will rarely be disturbed on review." United States v. Fantuzzi, 463 F.2d 683, 687 (2d Cir. 1972), quoting United States v. Borelli, 435 F.2d 500, 502 (2d Cir. 1970), cert. denied, 401 U.S. 946 (1971).

None of the examples of alleged prejudice cited by the defendants mandates a severance. These include (1) length of the trial, the volume of evidence or the number of defendants, see *United States* v. *Stromberg*, 268 F.2d 256 (2d Cir.), *cert. denied*, 361 U.S. 863 (1959); *United States* v. *Aviles*, 274 F.2d 179 (2d Cir. 1960) or (2) alleged limited involvement in the conspiracy, see *United States* v. *Vega*, 458 F.2d 1234, 1236 (2d Cir. 1972).

The defendants also suggest that it is improper to charge suppliers, middlemen and wholesalers in the same indictment. Not a single authority is cited to support this absurd proposition; see, *e.g.*, *United States* v. *Bynum*, *supra*, for the prevailing law in this Circuit. Indeed, such indictments are always brought, where the facts justify it, and constitute a classic "chain" conspiracy.

Various defendants allege that at most they played an insubstantial role in the conspiracy. The Government's proof will show the contrary. In any event, while each of the defendants charged in this indictment was involved in narcotics traffic for a substantial period of time, or involved in the distribution of substantial amounts of narcotics, should it become necessary, the court could always charge the jury specifically, as was suggested in *United States* v. *Borelli*, 336 F.2d 376, 385-86 (2d Cir. 1964), to focus carefully upon a particular defendant whose connection to the conspiracy may seem tenuous. Or, the court may grant a severance at any point during the trial. But the requested severances at this point, without any showing of improper joinder, and in the face of an indictment which includes a means section that makes clear that this was a single conspiracy, should be denied.

While in a different type of case, the Government would lay out, in substantial detail, its proposed proof at trial, here the Government is concerned that the motions for severance not serve as a vehicle for discovery of the theory of the Government's case, and of testimonial evidence to be offered at trial. Accordingly, the Government believes the suggestion made by counsel for defendant N. Alvarez for transmission to the Court of Grand Jury minutes for in camera inspection is a sound one. The minutes are attached as Exhibit A1-11 to these papers. In addition, the Government has attached as Exhibit B, a copy of a memorandum, dated April 5, 1976, which explains the Government's theory of the case, and discusses some of the applicable cases. This Exhibit is also submitted for the Court's in camera inspection. It should be noted, however, that the issue of the existence of a single conspiracy is a factual issue for the jury to determine, and unlike the double jeopardy and due process claims raised in United States v. Papa, to which counsel

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refers, this issue cannot be determined pre-trial. The Government has consented to this submission solely to assist the court in exercising its discretion in relation to the severance requests.

The defendant Juan Alvarez also moves for a severance of Counts One, Four, Five, Six and Seven from Count Two (the §848 count. This motion should be denied.

It can hardly be contested that all counts in which the defendant Alvarez is named are properly joined under Rule 8, F. R. Crim. P. Moreover, at least in this case, the evidence offered at trial to prove the substantive and conspiracy offenses is the same evidence to be offered against Alvarez on the 848 count.

By affidavit of Michael Osman, Esq., Alvarez's attorney, it is claimed that it is presently Alvarez's intention to testify in his own behalf on Count Two, but to invoke his Fifth Amendment privilege as to the remaining counts. Consequently, he argues, a joint trial on these counts would result in the defendant's being foreclosed from testifying, thereby prejudicing his defense.

The claim, as presented, is wholly speculative. The defendant has failed to submit an affidavit explaining the testimony he intends to give, and the factual underpinnings for his strategic decision to invoke his privilege as to some, but not all counts, or to explain why his defense to

Count Two is "unique." United States v. Barash, 266 F. Supp. 126, 129 (S.D.N.Y. 1966). Moreover, even assuming arguendo that the principles announced in Cross v. United States, 335 F.2d 987 (D.C. Cir. 1964), were applicable to this case,* the defendant has fallen far short of meeting even the threshold requirements of a claim for a severance. In Baker v. United States, 401 F.2d (D.C. Cir. 1968), a post-Cross decision, involving distinct charges of income tax evasion and larceny, the court stated:

> Appellant cites Cross for the proposition that a "timely and bona fide election by the accused to testify as to some counts and not as to others requires a Rule 14 severance." We think this reading of Cross is far too broad. Such a rule, in fact, would divest the court of all control over the matter of severance and entrust it to the defendant.
>
> ...[N]o need for a severance exists until the defendant makes a convincing showing that he has both important testimony to give concerning one count and strong need to refrain from testifying on the other. In making such a showing, it is essential that the defendant present enough information -- regarding the nature of the testimony he wishes to give on one count and his reasons for not wishing to testify on the other - to satisfy the court that the claim of prejudice is genuine and to enable it intelligently to weigh the considerations of "economy and expedition in judicial administration" against the defendant's interest in having a free choice with respect to testifying.

---

*Cross involved a single indictment charging two robberies which were unrelated and "clearly distinct in time, place and evidence". Cross v. United States, supra, at 989. In this indictment, the offenses charged against the defendant Alvarez are clearly related and involve essentially a single course of proof.

Baker v. *United States*, *supra*, at 977.

Moreover, even in the unlikely event that defendant and his counsel submit an affidavit in compliance with *Baker*, and make the required "convincing showing," alternative remedies to a severance are available to the court. The Government is prepared to elaborate on these alternatives, in that event. Accordingly, the motion for a severance of counts should be denied.

B. *Brady Related Motions Should Be Denied*

Various defendants have moved for disclosure of documents or information under what may best be classified as a *Brady* rationale, *Brady* v. *Maryland*, 373 U.S. 83 (1963). These include motions to disclose conviction records of government witnesses, requests that the Government set forth promises made to witnesses in advance of trial, and related motions for the pre-trial disclosure of all evidence exculpatory or favorable to the defendants. These requests should be denied.

The *Brady* rule does not create pre-trial remedies, *United States* v. *Dioguardi*, *supra*, 332 F. Supp. at 16, and it may not successfully be invoked before trial, *United States* v. *Callahan*, *supra*, 302 F. Supp. at 526.

With respect to Brady material the Government proposes the following schedule:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
JUN 29 9 25 AM '76
S.D. OF N.Y.

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-----------------------------------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

JUAN ANTONIO ALVAREZ, et al.,

Defendants.

-----------------------------------x

76 Cr. 324

#44673

OWEN, District Judge

Numerous of the thirty-three defendants in this narcotics indictment have moved to sever on the ground that there can be no single conspiracy here and that a joint trial would be prejudicial.

The motions require me to make a pretrial assessment in an area that has caused much discussion even after trial. I have studied the indictment and reviewed the grand jury minutes as requested by the parties. In the light of the various authorities that have been cited to me, I hereby sever defendants John Capra, Steven Dellacava and Leoluca Guarino collectively for later trial. Beyond the foregoing, all motions to sever are denied.

So Ordered.

June 24, 1976.

United States District Judge

Y & Lawsuit home Copy

76 Cr. 324

United States District Court
FOR THE
Southern District of New York

UNITED STATES OF AMERICA,
Plaintiff,
-against-
JUAN ANTONIO ALVAREZ, et al.,
Defendants.

MEMORANDUM AND ORDER

RICHARD OWEN, D. J.

d4

MEMO ENDORSED-

Owen

MEMORANDUM

U.S. DISTRICT COURT FILED OCT 21 1976 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 96 the motion is denied on these papers and on the trial record of U.S. v Alvarez 76 CR. 324. So ordered Rw Owen 10/19/76

UNITED STATES OF AMERICA, Rec'd 6/28/77

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

Indictment No. 76 Cr. 0324

MOTION FOR PSYCHIATRIC EXAMINATION OF THE GOVERNMENT WITNESS, JACK BROWN, TO DETERMINE HIS COMPETENCY TO TESTIFY.

U.S. DISTRICT COURT FILED OCT 21 1976 S.D. OF N.Y.

MICROFILM OCT 21 1976

SIRS:

PLEASE TAKE NOTICE, that upon the indictment, all proceedings herein had, and upon the instant motion, memorandum of law and affidavit, the defendant, LEOLUCA GUARINO, proceeding pro se, will move this Court, at the United States Courthouse for the Southern District of New York, at a time and place to be set by the Court, for an order granting the relief herein sought because of the following:

(a) The Government proposes to use unindicted co-conspirator JACK BROWN as a witness against the defendant, LEOLUCA GUARINO. Said witness is incompetent to testify because upon information and belief the Government has subjected him to the mental manipulation of subliminal suggestion (brainwashing) and hypnosis.

The defendant therefore prays for an order declaring the use of JACK BROWN'S testimony to be a violation of due process because of its incompetency under the circumstances above stated and further enumerated in the attached affidavit and memorandum of law.

That since the defendant is proceeding pro se this motion should be entertained under the liberal guidelines promulgated in Haines V. Kerner (404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594).

For such other and further relief as to the Court may seem just and proper.

DATED: October 6, 1976.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant pro se

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
-against-
LEOLUCA GUARINO, et al.,
DEFENDANT.

Indictment No. 76 Cr. 0324

AFFIDAVIT

STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that the true title of the instant case is United States V. Alvarez, et al., and that he is one of the defendants therein; and that since the incipiency of the proceedings against him he has been proceeding pro se.

1. That the instant affidavit is submitted in support of his motion appended hereto.

2. That on or about June 29, 1976, the defendant/ affiant, Leoluca Guarino, and co-defendants, John Capra and Steven Dellacava, were granted severances. And on August 10, 1976, trial to a jury commenced before Hon. Judge Owens as to the remaining (30) co-defendants.

3. That upon information and belief Government witness, JACK BROWN, is mentally incompetent to testify by virtue of the mental manipulation that Government agents have subjected him to for the past 2 years, approximately, which included but was not limited to hypnosis.

4. That upon the same information and belief Government witness, JACK BROWN, is presently hallucinating to the extent that he has testified that some of the co-defendants in the instant indictment possessed ray-guns that could shoot through walls.

5. That the defendant/affiant submits that the aforementioned facts clearly establish a prima facie showing that Government witness, JACK BROWN,

is mentally incompetent, and that to allow him to testify against the defendant/affiant, Leoluca Guarino, without the Court ordering a psychiatric examination for Jack Brown, would do violence to due process of law concepts.

WHEREFORE, the defendant/affiant prays for the relief requested in his motion appended hereto.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant/Affiant, pro se

Sworn to before me this
6 day of October, 1976.

Parole Officer: Authorized by The Act of
July 7, 1955 to Administer Oaths (18 U.S.C.
4004)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
-against-
LEOLUCA GUARINO, et al.,
DEFENDANT.

Indictment No. 76 Cr. 0324

MEMORANDUM IN SUPPORT OF MOTION FOR THE PSYCHIATRIC EXAMINATION OF THE GOVERNMENT WITNESS, JACK BROWN, TO DETERMINE HIS COMPETENCY TO TESTIFY

The Government intends to use the testimony of Jack Brown against the defendant Guarino. Jack Brown has been in continuous Government custody for approximately 2 years, and for 1½ years before the return of the instant indictment.

Upon information and belief Jack Brown has been subjected to the mental manipulation process of subliminal suggestion, commonly known as "brainwashing". Upon the same information and belief, Jack Brown has been subjected to the psychological process of fear induced by Government agents who would appear suddenly, in the early morning hours, to whisk him away from one place to another under heavy guard telling him that it was for his own safety because "the Mafia had put out a $50,000 contract on his life", and that "they" had discovered where he (Jack Brown) was. In this manner, and under similar circumstances, the Government has repeatedly moved Jack Brown to various jails and safehouses, including motel/hotels, throughout the country, successfully isolating him from familiar surroundings and enveloping him in an aura of fear--until his original survival mechanism crumbled and he was able to be re-programmed by the Government, which upon information and belief included, but was not limited to, hypnosis.

The defendant Guarino respectfully prays that this motion should not be dismissed out of hand as frivolous. Far from been specious his contentions, besides been based on information and belief, find ample support in the pernicious mind control principles of subliminal suggestion.

Subliminal suggestion is a malignant disease of exposure. Given the proper environment, along with an artificially created atmosphere based on isolation, fear, domination, instruction and seduction, mostly everyone will succumb to the exposure. Of course before an individual can be exposed to subliminal suggestion he must be seized and spirited away, and/or surrender and be spirited away. In either case it is at this critical point that the seed of fear is sowed.

A basic example of brain programming concerns the newborn giraffe whose mother was shot by hunters. The baby giraffe--in accordance with its genetic program--fixated the first large moving object it saw, which happened to be the hunters' jeep. It followed, vocalized to, tried to suckle and eventually to mate with the unresponsive vehicle. The giraffe's survival instincts were hooked to that jeep

It should be noted that a human being also is imprinted via its neural mechanism by outside influences and objects. These impressions are formulated in four distinct levels of development. They are as follows:

(1) The infant biosurvival circuit, or consciousness, which is concerned with safety-danger signals here and now;

(2) The older infant (toddler) circuit, or ego, which is concerned with motion and emotion;

(3) The student, verbal-symbolic circuit, or mind, which is concerned with language and behavior;

(4) The adult socio-sexual circuit, or personality, which is concerned with behavior.

The above are technically four brains that are persistently assaulted in the odious process called brainwashing--until the original impressions are wiped out. The bleached brain than stands ready to be re-imprinted. Since the original imprinting of these circuits was comparatively easy so is the mind manipulating process that cleanses it.

Such a bleaching process is what has happened to the witness Brown. Jack Brown has been in Government custody for approximately 2 years. He has been isolated from familiar surroundings so that his biosurvival imprint would not work, and thus reduced to his original state of infancy, i.e., first-brain vulnerability.* He was next exposed to terror tactics calculated to reduce him to a state of helplessness by continuously been moved around the country under the atmospheric spectrum of fear for his life. In this fashion the Government set the stage for the second step of imprint vulnerability. That helplessness can be escalated to panic by means of terror tactics is by no means novel. In Costa-Gavra's film "The Confession" the Communist Brainwashers take [illegible] subject from his cell, put a noose around his neck and lead him to a place where he expects to be hanged. (Here, Jack Brown is taken from his various places of isolated detention at all hours of the day and night and surreptitiously moved around the country, under heavy guard, under the guise that "the Mafia had put out a $50,000 contract on his life." And that the movements were for his own protection).

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* Dr. John C. Liddy has pointed out that it only takes a few hours of true isolation before anxiety appears and only a little longer--a few days--before hallucinations begin, and the victim is ready to be imprinted with a new protective, maternal object.

It is obvious that at this point of mind manipulation the emotional brain hooks into the new power structure. The tormentors and oppressors become the protectors; the big brother image to whom Jack Brown is now dependent upon.

The constant moving about of Jack Brown served another purpose besides the one noted above. Paramount to reimprinting the third brain, the rational mind, is the necessity to wrench and detach the victim from familiar surroundings, i.e., seperate him from those who share the same language, skills and abide by formulated rules of conduct that are deep rooted within the group. This is done by placing the victim in situations where he is constantly exposed to alien stimuli that compels him to imprint new signals and skills in order to survive. It is not unusual for a man to become a Communist when he lives with Communists, or an informer/turncoat when he is living amongst informer/turncoats; rather, it requires delicate neurological engineering to remain oneself under such conditions.

The personality, or fourth brain, is next assaulted. Reimprinting vulnerability is attained via seduction--sexual and otherwise. In the case at bar, and based upon information and belief, Jack Brown was seduced both by sexual favors* and freedom from prosecution along with monetary assistance.

The defendant Guarino contends that because of the subliminal suggestion technique employed against Jack Brown, which upon information and belief included hyposis, that he is mentally incompetent to testify. His testimony will be tailor-made per the Government agents subliminal suggestions, with no foundation in truth. Consequently, it is respectfully requested that this Court oreder a psychiatric examination of the witness Jack Brown to determine his competency to testify.

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* The granting of sexual favors to unindicted co-conspirators appears to be a common practice in the Southern District of New York. And there are indications that Government prosecutor's offices are used for these trysts. (See e.g., United States V. Sperling, 506 F.2d 1323, 1332 (2nd Cir. 1974)).

CONCLUSION

Wherefore, under the facts and the law this Court should grant the relief herein requested and/or whatever other relief this Court may deem appropriate under the circumstances and responsive to due process of law.

DATED: October 6, 1976.

Respectfully submitted,

Leoluca Guarino

Leoluca Guarino #78281
Defendant, pro se

CERTIFICATE OF SERVICE BY MAIL

STATE OF GEORGIA) SS:
COUNTY OF FULTON)

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that on this 6 day of October, 1976, he served a copy of the instant papers upon the U.S. Attorney for the Southern District of New York, all of which should constitute sufficient proof of service.

Yours ets.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant, pro se
PO Box PMB
Atlanta, Georgia 30315

Sworn to before me this
6 day of October, 1976.

Charles C. Moore

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------------x

UNITED STATES OF AMERICA,
Plaintiff,

-against-

JUAN ANTONIO ALVAREZ, et al.,
Defendants.

--------------------------------------x

76 Cr. 324

MEMORANDUM AND ORDER

44760

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FILED
JUL 15 10 53 AM '76
U.S. DISTRICT COURT

OWEN, District Judge

I have now considered all motions of such defendants as moved for discovery and inspection and bills of particulars. Except to the extent that discovery and inspection was permitted and bills of particulars directed to be furnished by my order of June 15, 1976, all such motions are denied.

Certain defendants moved for psychiatric information bearing upon anticipated government witnesses. I do not find that any defendant has made a showing compelling this relief. Given this, I do not reach the more difficult question which is, assuming that a psychiatric report or reports exists as to a prospective witness, whether the court has the right, at this time, without the "patient" being before me, to breach any patient-physician privilege

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that may exist. *See* *U.S. v. Evans*, 454 F.2d 813,820 (8th Cir.),*cert*. *denied*, 406 U.S. 969 (1972).

The foregoing is so ordered.

July 14, 1976.

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------------x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

JUAN ANTONIO ALVAREZ, et al., :

Defendants. :

--------------------------------------x

76 Cr. 324

MEMORANDUM AND ORDER

44769

FILED
U.S. DISTRICT COURT
JUL 16 1 15 PM '76
S.D. OF N.Y.

OWEN, District Judge

In order to avert any potential Bruton problems at trial, the government is ordered, pursuant to Rule 14, to deliver to the court for *in camera* inspection any confessions it intends to offer in evidence at trial, giving indication of any redactions it intends to make.

So Ordered.

July 15, 1976.

United States District Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

UNITED STATES OF AMERICA, :

Plainti[illegible] : 76 Cr.324

-against-

:

JUAN ANTONIO ALVAREZ, et al., MEMORANDUM AND ORDER

:

Defendants. :

--x

c/4768

FILED
U.S. DISTRICT COURT
JUL 16 15 PM '76
S.D. OF N.Y.

MICROFILM
JUL

OWEN, District Judge

I. Disclosure of Government Witnesses and Cooperating Defendants.

Various defendants have moved for disclosure of the identity of government witnesses. In United States v. Cannone, 528 F.2d 296 (1975), this Circuit held that "where a specific showing of need for concealment by the government was not challenged by a specific showing of need for disclosure by the defendant," the trial court did not have the discretion to order disclosure. Id.at 302. I conclude here that defendants have failed to make a sufficiently specific showing of need for disclosure, and, in any event, the government has shown a need for concealment.

Defendants argue that even if disclosure of witnesses should not be generally required, the government should, at the least, disclose the identity of witnesses in protective

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custody. But again, there is not a specific showing of need. And I am unable to conclude that simply because a witness is in protective custody, the danger of intimidation or other interference is substantially alleviated. The government has consented to convey requests for interviews to witnesses in protective custody and, if consent is given by the witness, to make him or her available. The government is directed to follow this procedure. All motions seeking the disclosure of government witnesses are denied.

Certain defendants have also moved to compel the disclosure of the identity of cooperating defendants. They argue that the government may receive confidential information about their trial strategy unless they know which, if any, of their codefendants are cooperating. While the prosecution may not in any way seek to intrude into an adversary's confidences, it is axiomatic that a defendant should choose his confidants with care, and does so at his peril. Further, disclosing the identity of cooperating defendants involves the same dangers as revealing the identities of witnesses. To avoid potential Sixth Amendment problems, the government has offered to advise any cooperating defendant and counsel not to attend joint meetings, and not to impart any information which may have been received since the beginning of cooperation. I direct that this be done. Defendants' motions to disclose the identity of cooperating defendants are denied.

II. Preindictment Delay.

Various defendants move to dismiss the indictment on the grounds of preindictment delay. The apparent basis for this claim is that some of the overt acts charged in the indictment date back to 1968. But defendants choose to ignore that the indictment alleges an ongoing conspiracy continuing up to the date the indictment was filed. Their position rests on the faulty assumption that once the government learns of any individual criminal acts, it must immediately commence prosecution even if the acts in question are part of an ongoing course of criminal activity. As in the case of United v. Eucker, ________F.2d__________, Slip Op. 2459, 2468 (2d Cir. March 8, 1976), defendants have "failed to show any contrived procrastination by the Government and could point to no prejudice established beyond mere conjecture." Accordingly, the motions are denied.

III. Evidence of Prior Convictions.

Defendants Glaze, Kellem, Morris and Lois Sampson have moved for an order enjoining the government from cross-examining them about their past record. This area is governed by Federal Rule of Evidence 609 which permits the impeachment use of certain prior convictions if the "court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant." None of the movants have submitted sufficient information to permit me to make that decision. Should any movant seek to pursue this issue, an individual hearing will be held at 10:00 A.M. on July 21, 1976 in Courtroom 318.

IV. Agency Search Pursuant to 18 U.S.C. § 3504.

The government has made available all wiretaps it intends to use at trial. Several defendants have moved that the court order that the government, in addition, make inquiry and affirm or deny whether they were subject to illegal surveillance. But § 3504 does not impose such requirement upon the government in every case. There must first be "a claim by a party aggrieved that evidence is inadmissible." This Circuit has held that when "assertions of misconduct are so obviously frivolous and lack even a colorable basis there is no 'claim' sufficient to trigger the government obligation within the meaning of § 3504." In re Millow, 529 F.2d 770, 774 (2d Cir. 1976). In this case, the only basis given by any defendant is the unsupported and unelaborated assertion of Rodriguez that "all evidence . . . was obtained by the exploitation of an unlawful act." This is obviously insufficient.

Accordingly, said motions are denied.

V. The Constitutionality of 21 U.S.C. § 841.

Defendant Joseph Sampson moves to dismiss on the ground that 21 U.S.C. § 841 is unconstitutional because the statutory scheme delegates to the Attorney General the power to reclassify various drugs and thus alter the penalty for conviction under the statute. Whatever the abstract merits of defendant's motion, I need not reach them here because the Attorney General has not reclassified the drugs involved in this case, and consequently there is no prospect that defendant will be in any way affected by the alleged unconstitutional delegation. United States v. Westlake, 480 F.2d 1225 (5th Cir. 1973). Accordingly, the motion is denied.

VI. Aliases.

Numerous defendants have moved to have their aliases stricken from the indictment. Although it is normally undesirable to include aliases in indictments, an exception is made when an alias is relevant to identifying the defendant. United States v. Wilkerson, 456 F.2d 57 (6th Cir.), cert. denied, 408 U.S. 926 (1972), United States v. Skolek, 474 F.2d 582 (10th Cir. 1973). The government has consented to having the alias "Shi's Woman" stricken from the indictment. This is so ordered. Upon the government's representation that inclusion of the aliases is necessary for identification, all other motions to strike are denied.

VII. Miscellaneous Motions.

Defendant Helen Kellem has moved for an order under the Criminal Justice Act directing the government to pay her transportation expenses by taxi to the courthouse upon the ground that she is physically incapacitated and consequently unable to use other modes of transportation. Upon consideration of her doctor's affidavit, her motion is granted.

Defendant Solon Glaze moves to have the indictment dismissed with respect to him on grounds of double jeopardy. The only reason he offers is that he was previously convicted on the basis of testimony by the same informer that he anticipates will testify in this case. This is clearly insufficient. Even if he was convicted of the overt act alleged in this indictment, he can still be prosecuted for conspiracy, an offense separate from individual substantive violations of the drug laws. Pinkerton v. United States, 328 U.S. 640 (1946).

Numerous other motions, not meriting individual discussion, have been filed by various defendants. Having considered them, I deny all other non-suppression motions.

So Ordered.

July 15, 1976.

United States District Judge

ORIGINAL

Subpoena to Produce Document or Object Cr. Form No. 21 (Rev. 5-68)

United States District Court

FOR THE

UNITED STATES OF AMERICA
v.
JUAN ANTONIO ALVAREZ

No. 76 Cr. 324 (R.O.)

To See List Annexed

You are hereby commanded to appear in the United States District Court for the District of New York at U.S.Courthouse, Foley Square/ Rm.No. 2906 in the city of New York on the 4TH day of AUGUST 19 76 at o'clock M. to testify in the case of United States v. Alvarez and bring with you See List Annexed.

This subpoena is issued upon application of the[1] defendant INTERSIMONE

July 20, 1976

David V. Keegan
Attorney for Intersimone
1000 Franklin Avenue
Address Garden City, N.Y.
Tel. (516) 248-1860

RAYMOND F. BURGHARDT, Clerk
Clerk.
By J. P. Castellone,
Deputy Clerk.

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[1] Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at on
and on at
served it on the within named
by delivering a copy to and tendering to the fee for one day's attendance and the mileage allowed by law.[2]

Dated:

, 19 By ,

Service Fees
Travel $
Services
Total $

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[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

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LIST OF PERSONS AND DOCUMENTS SUBPOENAED

LINCOLN TOWERS, ASS.
1. ~~Alcoa~~ Residences, ~~Inc.~~
~~866 United Nations Plaza~~ 150 WEST END AVE. N.Y.C.
New York, New York 10017

Documents Subpoenaed:

a) Application for lease, credit report, and lease and renewal leases and correspondence re Jack and Jan Brown, occupants of apartment 20F, located at 180 West End Avenue, from approximately 1969 to 1973. AKA JACK JORDAN + JAN JORDAN

b) Reports of security office re above tenants.

2. Police Headquarters
New York Police Department
1 Police Plaza
New York, New York 10007

Documents Subpoenaed:

a) Arrest records and conviction record re Jack Brown, a/k/a Jack Jordan, #B364-801 D.O.B. 5/3/28.

b) All other records re Brown, a/k/a Jordan.

3. New York County District Attorney
155 Lenard Street
New York, New York

Documents Subpoenaed:

a) Complete files on Jack Brown, a/k/a Jack Jordan, #B364-801, born 5/3/28, including indictments and/or information filed against Brown, dispositions of cases, transcripts of trials and/or hearings.

4. Police Headquarters
District of Columbia Police Department
Washington, D.C.

Documents Subpoenaed:

a) Arrest records and conviction record of Jack Brown, a/k/a Jack Jordan, D.C.P.D. #122-570.

b) All other records relating to Brown, a/k/a Jordan.

5. Police Headquarters
Philadelphia Police Department
Philadelphia, Pennsylvania

Documents Subpoenaed:

a) Arrest records and conviction record of Jack Brown, a/k/a Jack Jordan, Philadelphia Police Department #258-246, born 5/3/28.

b) All other records relating to Brown, a/k/a Jordan.

6. Bergen County Probation Department
Hackensack Office
133 River Street
Hackensack, New Jersey 07601

Documents Subpoenaed:

a) File relating to John Theodore Brown, a/k/a John Brown, D.O.B. 5/3/28, sentenced 8/15/69 in Hackensack, New Jersey on a weapons charge.

7. Roosevelt Hospital
428 West 59th Street
New York, New York
Attention: Medical Records

Documents Subpoenaed:

a) Hospital records relating to treatment of John Brown, a/k/a Jack Jordan, D.O.B. 5/3/28, treated on July 2, 1970.

b) Hospital records relating to treatment of Antonio Perdiz, a/k/a Fillipino Tony on July 2, 1970.

AUTOMOBILES 1971 Gold Lincoln Continental
NJ UKZ 225

A 118

FBI NUMBER Unknown

OTHER CRIMINAL IDENTIFICATION: Unknown

POSITION IN ORGANIZATION JAMES is the primary distributor of heroin and cocaine for WOMACK in New York City area. She supplied kilogram traffickers in New York City as well as, several other cities in the United States.

CRIMINAL RECORD Unknown

NAME: JOHN THEODORE BROWN

ADDRESS: (2)*
180 West End Avenue, Apt. 20-F
10 West 66th Street, Apt. 9-1
*Both in New York City, N.Y.

TELEPHONES: Both Area Code 212 874-4973
787-8084

CITIZENSHIP: UNITED STATES

RACE: Negro

SEX: Male

PLACE AND DATE OF BIRTH: May 3, 1928 - Place Unknown

HEIGHT: 5' 10"

WEIGHT: Unknown

EYES: Brown

MISCELLANEOUS PHYSICAL CHARACTERISTICS: Unknown

ALIASES:
JACKIE BROWN - JACKIE JORDAN-
DON BROWN
JOHN JORDAN - JACKIE - DON BROWN

OCCUPATION: Furrier

EDUCATION: Unknown

SOCIAL SECURITY NUMBER: 577-38-7217

AUTOMOBILE (S): Unknown

FBI NUMBER: 416 896 4

OTHER CRIMINAL IDENTIFICATION:
Wash., D.C.Police Dept. #122-570
Phila., Pa. Police Dept.258-246
New York Police Dept. #364-801

POSITION IN ORGANIZATION: Multi-Kilogram customer of both WOMACK and JAMES: He distributes to kilogram traffickers in New York City as well as several southern cities, including Washington, D.C. and ATLANTA, GEORGIA

Y. has copy Also [illegible]!

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AGENCY	DATE	OFFENSE	DISPOSITION
Camp Cook, Calif.	12/19/46	Stealing Gov't. Prop.	8 Months
Camp Coml., GEorgia	10/25/47	AW 94	1 Year - 6 Months
Wash., P.D.	06/21/51	Larceny	To Lexington as Narcotic Addict
Wash., P.D.	09/21/51	Larceny	360 Days
Phila., Pa., P.D.	02/12/53	Larceny, RSG	11 to 23 Months
New York	11/28/58	Drugs	60 Days
NYPD	04/24/57	Robbery (gun)	
NYPD	03/06/58	Possession of Cocaine	6 Months
Narc. Bur.,Wash.	06/24/60	Sale of Narcotics	20 to 60 Months
USP, Atlanta	04/05/62	Consp. Commit Crime against U.S.	1 Year 8 Months to 5 Years
Narc. Bur., Wash.	10/23/64	Fed. Narc.Law	No Disp.
USM., N.Y.	05/07/65	Sale of Narcotics	No Disp.
NYPD	06/08/67	Poss. cocaine & loaded gun	Dismissed
Hackensack,N.J.	08/15/69	Unlaw. Use Dang.Weapon	Ordered take Psychiatric Treatmer

FACTS AND CIRCUMSTANCES - BACKGROUND OF INFORMANTS

Up to and including May 16, 1972 and beginning on or about February 1971, the Bureau of Narcotic and Dangerous Drugs has received information from variou sources directly pertaining to large-scale distribution and dealings in controlled substances to wit, heroin and cocaine. This information clearly indicates that the distributors and traffickers are WILLIAM G. WOMACK, Louise JAMES, JOHN T. BROWN, OSWALD PETERSON, NELSON PADRONE, and others as yet unknown.

A. CONFIDENTIAL INFORMANTS

From February 1971 up to and including April 26, 1972, confidential informants of the Bureau of Narcotics and Dangerous Drugs have supplied the abov mentioned information.

1. A confidential informant designated as S-1 (BNDD Identifier SD1-2003 has provided reliable information concerning the activities of numerous significant narcotics traffickers. This informant has been associated with major narcotics traffickers for several years. This was due mainly to the informant's expertise at adulterating heroin and cocaine. On numerous occasions, the informant adulterated cocaine for WOMACK'S source of supply. On occasion the informant also adulterated cocaine for WOMACK. This informant's information has been verified as reliable by extensive investigation by Agents of the Bureau of Narcotics and Dangerous Drugs. On or about March 29, 1972, S-1 advised Agents of the Bureau of Narcotics and Dangerous Drugs, that WILLIAM C. WOMACK was in the narcotic business as a wholesale supplier of heroin and was obtaining said narcotics from sources in New York City and Miami, Florida and was directly supplying narcotic wholesalers in several cities in the Eastern United States.

Y Lee Copy - Also Lawsuit

GENERAL SERVICES ADMINISTRATION
National Archives and Records Service
Washington National Records Center
Washington, D C 20409

COURTS
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
9/22/76

A 120

1976

r
J.S. Attorney

ndrews Plaza
10007

Fir
No

Dear Mr. Sear:

At your request, the following information is provided.

Accession 118-67A140 box 104 was destroyed in August of 1976 in accordance with U.S. Attorneys' Disposal Schedule (Title 8: Administrative Division) item 1. The records in this box were 1960 criminal case files. The schedule provides for the destruction of these records when they are 15 years old and this particular box of records was destroyed in accordance with that policy.

Sincerely,

Jack Bumgarner
JACK BUMGARNER
Chief, Accession and
Disposal Branch

Sworn to before me this 15th day of September 1976
in the District of Columbia

Francis J. Heppner
FRANCIS J. HEPPNER
Notary Public
My Commission Expires August 31, 1979

Keep Freedom in Your Future With U.S. Savings Bonds

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3136-C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW.

IN REPLY, PLEASE REFER TO
INITIALS AND NUMBER

September 15, 1976

A 121

Crt. Exhibit
1+2

AUSA Thomas H. Sear
U.S. Attorney's Office
Southern District of New York
1st St. Andrews Plaza
New York, N.Y. 10007

Dear AUSA Sear:

In response to your request there is attached to this notarized letter a copy of our criminal case index card for John T. Brown (Criminal #552-60), a copy of record transmittal notice for the storage of the John T. Brown case file and the notice of the disposal of the record received from the Washington National Records Center.

If we can be of any further assistance to you please let me know.

Sincerely,

Thomas R. Cotter, Sr.

Thomas R. Cotter, Sr.
Administrative Officer

Subscribed and sworn to before me on the 15th day of September, 1976.

Notary Public
Commission expires: 2/14/78

SMITHSON

BROWN, JOHN T.

C. 552-60 GJ. 675-60 #26400 6/29/60 Vio. 18 USC 371
674-60 26 USC 4705a, 4704
654-60 21 USC 174

CRIMINAL
CASE
NUMBER

COPY RECORDS SENT TO FEDERAL RECORDS CENTER

PAGE 16

ORM 135-A
ITION
SERVICES ADMIN.
-302.60

RECORDS TRANSMITTAL AND RECEIPT
(CONTINUATION)

AGENCY Dept. of Justice
Office of the U.S.
Attorney, U.S.

DATE July 8, 1966

A 123

BOX NUMBERS: FRC ONLY	BOX NUMBERS: AGENCY	DESCRIPTION OF RECORDS WITH INCLUSIVE DATES	DISPOSAL AUTHORITY
	97	365-60	
	98	366-60 - 384-60 Con't	
	99	384-60 - 405-60 except 393-60	
	100	406-60 - 439-60 except ~~425-60~~	
	101	440-60 - 475-60 except ~~440-60~~ and 474-60 ✓	
	102	476-60 - 502-60	
	103	503-60 - 535-60 except 510-60	
	104	536-60 - 552-60	
	105	553-60 - 588-60	
	106	589-60 - 620-60	
	107	621-60 - 640-60	
	108	641-60 - 670-60 except ~~652-60~~ and ~~662-60~~	
	109	671-60 - 705-60 except 701-60 ✓	
	110	706-60 - 745-60	
	111	746-60 - 785-60	
	112	786-60 - 825-60	
	113	826-60 - 855-60	
	114	856-60 - 892-60	
	115	893-60 - 922-60	
	116	923-60 - 953-60 except 929-60	
	117	954-60 - 965-60 Con't	
	118	965-60 Con't	
	119	965-60	
	120	966-60 - 984-60	
	121	985-60 - 986-60 Con't	
	122	986-60	

U. S. GOVERNMENT PRINTING OFFICE : 1964 O - 732-185

A 124

COPY RECORDS DISPOSAL

NOTICE OF INTENT TO DISPOSE OF RECORDS

The records described in this notice appear eligible for disposal on the date shown. In accordance with FPMR 101.11.410.8(b) they will be disposed of 30 days from the date of this notice. If you concur in the disposal, annotate your SF-135 (all copies) to show that the records have been destroyed. No further action is required. If you do not concur in the scheduled disposal of these records, write justification for their retention on the reverse side of this form (including a proposed new disposal date) and return the form to the records center.

REMARKS

LOCATION 16-79-21-4-4

DATE OF NOTICE: 06/01/76

DISPOSAL DATE: 476

RECORDS DESCRIPTION

ACCESSION NUMBER: 118-67D014C

SUBGROUP: WAS

VOLUME (*Cubic feet*): 50

SERIES DESCRIPTION: BOX 30-37 85-126

DISPOSAL AUTHORITY: MEMO130/1/1

WASHINGTON NATIONAL RECORDS
CENTER
WASHINGTON, DC 20409

GENERAL SERVICES ADMINISTRATION

GSA FORM 7015 (REV. 1-76)

1- Any micro-film of this and are there more documents?

2- This portion blotted out? (Lower portion below print).

3. Are these papers a matter of record and is there Judge Owen's ruling relating to it.

A 125

OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF BERGEN
HACKENSACK, NEW JERSEY 07601
(201) 487-3400

GUY WM CALISSI
COUNTY PROSECUTOR

ASSISTANT COUNTY PROSECUTORS
CHARLES J. TYNE
THOMAS J. RYAN
ROBERT DILTS
FRANK WAGNER
RALPH A. POLITO
HAROLD N. SPRINGSTEAD
PETER F. BOGGIA
JAMES D. CHECKI, JR
RICHARD F. ARONSOHN

Re: Jack Brown!
arrest in New Jersey.

From Yola 6/17/77
Friday

October 6, 1969

Judge Peter R. Fornabai
Municipal Court
Fort Lee, New Jersey

Re: State vs. Jack Jordan

Dear Judge:

This is to acknowledge receipt of your letter of September 30, 1969 relative to the above-captioned matter.

In view of the facts and circumstances as set forth in your letter, I have no objection to the matter being downgraded to violation of the Disorderly Persons Act, but would recommend that the defendant submit to a psychiatric examination.

Very truly yours,

Guy W. Calissi
Bergen County Prosecutor

GWC:jh

No Copy for J
or Lawrence

Recd. 6/24/7 Typed Copy

Statement of Albert Lee JONES, 123-07 111th Ave., South Ozone Park, Queens, New York, at Room 1128, 201 Varick Street, New York, New York, in the presence of S/A Richard Holborow and Sgt. Daniel Guiney, officers of the New York Joint Task Force, Bureau of Narcotics & Dangerous Drugs, (11-12-71 - 3:50 A.M.)

I, Albert Lee Jones, make the following free and voluntary statement to officers Richard Holborow & Daniel Guiney, who have identified themselves to me as officers of the New York Joint Task Force. I have been advised that I do not have to make a statement, and that anything I say may be used against me in court, and I have been advised that I may have a lawyer before making this statement. I do not desire to consult a lawyer before making this statement. No threats, force, or promises of rewards have been used to obtain this statement.

On November 11, 1971, at about 7:30 P.M., I was called by G. T. WATSON AT THE Grand Central Motor Inn and G. T. WATSON wanted to know if I could get a "big one" (kilo of heroin). I told him (WATSON) that I could get the "big one" and would meet him at the BLUE ANGEL BAR, 138th St. & Morris Ave., Bronx. (The location of the meeting was set up by WATSON). I got to the above bar at about 9:15 P.M. (I operated a 1970 Buick) and met with G. T. WATSON and was introduced to a Spanish man who was subsequently identified to me as being JULIO MALDONADO. After a few minutes of general conversation, I took G. T. WATSON aside and asked him how well he knew this guy, JULIO. WATSON told me he was knew him (MALDONADO) very well and that he was a customer in his (WATSON'S) bar. We then went back to MALDONADO and I told him I could handle one "big one" (kilo) and then MALDONADO wanted to know if I could handle two kilos that night. I said that I couldn't. I told him that we would ride in the car together (MALDONADO and me) and to tell the other people in the car to go to 83rd St. & 1st Ave., NYC, and park. The other people should wait there until he (MALDONADO) went upstairs with the money and then MALDONADO and I would get the heroin and bring it down

a.j.

12/2/76
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
3

downstairs. MALDONADO THEN WENT outside the bar and talked to "his" people (Subsequently identified to me as three New York City Police Officers) MALDONADO returned to the bar at approximately 12:15 P.M. and told me that "his" people were outside, and that everything was set up. WATSON was with me this entire time and knew everything that was happening. I told MALDONADO to come with me in my car and "his" people could follow us downtown. MALDONADO and I then got in my car and left the Blue Angel with MALDONADO after MALDONADO told a man identified as EMILIO HERNANDEZ that we were going to 83rd St. & 1st. Ave., NYC. MALDONADO and I then went to 322 East 82nd Street, NYC, where we parked my car. MALDONADO and I went into 322 E. 82nd St., Apt. 5C, where we met Miss Louise Smith, who was holding a kilo package of heroin for me. (After G. T. WATSON called me earlier in the day at my motel, I placed a telephone call to 787-8084, where I talked to JACK BROWN and I told him I had someone who wanted a "big one". BROWN then told me that it would be delivered in an hour to the apt. at 82nd Street). (The price had been pre-set at $24,000.00 for a 5 to 1 out). Miss Louise SMITH had the heroin in the kitchen and MALDONADO took a sample from the package and we both left the apt. I waited in fron of the building while MALDONADO went around the corner on 1st Ave., with the sample. After a while, MALDONADO hadn't returned so I walked up to 1st Ave. where MALDONADO who said that it wouldn't be long that everything was set. I then went back and sat in front of the door at 322 E. 82nd Street. A little while later I again walked back to the corner and I saw MALDONADO's people (police officers) pulling away on 1st Ave., going north, then made a left (westbound) on 83rd St. I walked back to 322 E. 82nd Street. A few minutes later a car operated by MALDONADO's people pulled up in fron of 322 E. 82nd St., and MALDONADO got out, and the other people (police officers) waited in the car. MALDONADO told me that he didn't have the money that the people in the car wanted to see the heroin first. MALDONADO and I then saw LOUISE SMITH and told her that we were taking the package of heroin (kilo) downstairs and that we would be right back up with the money. SMITH didn't

a.j.

want to let the "package" outside, but I told her that I would go downstairs with MALDONADO TO watch the "package" and the money. SMITH gave the package to MALDONADO and both of us left her apartment to go downstairs and MALDONADO went over to the car and gave the package to the people in the car (two of the police officers). They gave him an attache case and MALDONADO and I went back into the hallway where we opened the attache case and discovered that there was no money in the case. We both ran out into the street where we attempted to catch the people in the car. At this point we were arrested by the same people who were in the car.

I have read this statement consisting of this page and two other pages. To the bestof my knowledge and belief it is true and correct. I have initialed all previous pages and corrections, and I sign this statement below.

It should be noted that this statement was typed by S/A Holborow and what is included in this statement was told to him by me and typed the way I told it to S/A Holborow.

Albert Lee Jones

11/12/71
Date

WITNESSED BY:

S/A Richard Holborow

Sgt. Daniel Guiney

DATE: 11/12/71

Rec'd. 6/20/77

①

Isabelle Blau

372 Central Park West
New York City, N.Y. 10025
TEL. 866-3318

November 27,1976

Hon. Irving Kaufman
Chief Judge United States Court of Appeals
Foley Square, N.Y., N.Y. 10007

Dear Judge Kaufman:

I served as forewoman of the jury for the trial which began August 10 and ended November 12,1976 charging 22 defendants with involvement in a federal narcotic conspiracy, in the court of Judge Owen.

I entered into the role of juror with innocence, curiosity and concern regarding our judicial system.

I was forced as a juror under the prevailing law to arrive at a verdict of guilty or not guilty based on the evidence presented which effected the lives of 22 human beings. I feel it was virtually impossible to arrive at a fair and just verdict for those 22 people, bound and tried together for three months under the existing rules, conditions and laws which I was obliged to abide by.

I demanded of myself and the others of the jury an open mind with total freedom of expression to the very last moment. Until the end, I hoped to find flares of truths from my fellow jurors to confirm and determine my judgement.

I expressed to them, the injustice of rushed conclusions and conveyed my dilemma in regard to the rememberance of such an abundance of facts, data, witnesses and evidence, as well as my inability to cope with the enormity of the task of gathering sufficient and adequate details of information.

I experienced mental incarceration and felt dehumanized, stifled, deprived, confined, restricted and frustrated during the three months of the trial. Under these conditions, could I have pursued my search for truth and justice to the fullest extent? I am deeply disturbed, pained and anguished.

I abhor and object to the procedure that presented to me, a juror, bits, pieces and fragments of the evidence presumed to be true, while being denied the whole truth concerning this evidence, which was withheld and known by other members of the court. I resented the side bars.

The overlapping of information, superimposing, crisscrossing of layers of facts juxtaposed in normal and legal language, led to confusion. During the deliberation, after requests to hear portions of the transcript read, upon our return to the jury room memories occassionally differed. I would have wanted the transcript in the jury room to refer to constantly over and over, if need be.

The demeanor of the witnesses and impressions, I took notice of, often were wasted away by the magnitude of the trial. No asking of questions were allowed during the trial. When I was most apt to have a thought of inquiry, it was at times lost into oblivion and forgotten from my mind thereafter.

When I asked if we could take notes, I was told no. I accepted this as law. When I asked if during the verdict the jury or myself as forewoman could have the privilege of some expression, I was also told no.

How can I, as a juror, pass judgement without having the opportunity to confer with all others involved in the case who presumably are seeking the truth.

Is the jury considered so incapable, so incompetent of judgement if presented with all or more of the known truths and facts rather than prepared and selected portions of the supposed truths and facts, that they cannot arrive at an objective conclusion? Are the defense lawyers and prosecutors above the jury in judgement on the one hand and yet the jury's word is ultimate? We are not permitted to judge the whole and yet we are asked to pass judgement as to the guilt or innocence of the defendants dealing with this whole while given only particles of the evidence. At the same time, we carry with us the burden of deciphering these parts which may or may not be the whole truth. The possible birth and flowering of complete justice is hereby denied.

I respect my common sense fervently and was asked to use it in passing judgement. How could I, when I personally needed the time to digest and assimilate even the limited facts presented to me?

I did not know my legal rights. Knowing, I had to pass judgement on the 22 defendants being tried simultaneously, did I have the legal right to object? I never knew clearly what my rights as a juror were and felt if I went beyond the range of what I was informed of as my rights, I might be charged with transgressing my authority as juror.

As a juror, I feel guilty, because I did not know how to object and speak my mind in the court room as I did in the jury room.

I, urge, as a citizen and juror, that steps be taken to rectify this miscarriage of justice.

Respectfully yours,

Isabelle Blau

Miss Mrs? Isabelle Blau

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF
IRVING R. KAUFMAN
CHIEF JUDGE
U. S. COURTHOUSE
NEW YORK, N. Y. 10007

December 2, 1976

Ms. Isabelle Blau
372 Central Park West
New York, New York 10025

Dear Ms. Blau:

Your letter of November 27 has been referred to the Honorable Richard Owen, the District Judge who presided over the trial in United States v. Juan Antonio Alvarez, et al. It is likely you will receive a response from him.

Very sincerely,

Irving R. Kaufman
Chief Judge

cc: Honorable Richard Owen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FOLEY SQUARE
NEW YORK, NEW YORK 10007

RICHARD OWEN
JUDGE

December 8, 1976

TO ALL COUNSEL:

Re: U.S. v. Alvarez
76 Cr. 324

I am in receipt of a letter from the forelady, Miss Isabelle Blau, dated November 27, 1976, forwarded to me by Chief Judge Irving Kaufman.

I thought you might be interested in it and my response, which I enclose.

Yours very truly,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FOLEY SQUARE
NEW YORK, NEW YORK 10007

RICHARD OWEN
JUDGE

December 8, 1976

Miss Isabelle Blau
372 Central Park West
New York, New York 10025

Dear Miss Blau:

Chief Judge Kaufman has sent me your letter of November 27, and I am distressed to learn of your feelings. I gather that the essence of your dissatisfaction is that the rules of evidence kept facts from you that you feel you should have had before you for consideration, and that you would have liked more time for deliberation.

I am sure you will agree that it is essential in every case that all the parties receive a "fair trial" on the issues presented. Thus, you, the jury, should have before you only relevant and probative facts to consider. One of my responsibilities as a trial judge is to screen proposed evidence and exclude such matters as, in my judgment, would not assist you in arriving at your verdict but could only serve to prejudice you in your consideration of the case. In this regard, you mention resenting the side bar conferences. Those were generally to determine whether or not a risk of prejudicial or inadmissible hearsay evidence was in the offing. Now that the trial is over, I am free to observe to you that side bar conferences frequently involved separating appropriate evidence bearing on the charges from evidence that might suggest a defendant's prior conviction for narcotics violations or involvement in other criminal activity. Such evidence could have strongly, adversely, and improperly influenced a juror's assessment of a defendant's conduct on these narcotics charges. Each defendant on this trial was entitled to be judged on the facts involved in this charge alone, uninfluenced by such things as a prior criminal record.

As an example, you may recall testimony as to a certain defendant being "away from New York" for a certain period of time. This phraseology was worked out between counsel and the Court to enable a defendant to explain an absence at a particular time without revealing to you that, in fact, that defendant was in prison at that time.

Miss Isabelle Blau: December 8, 1976

In sum, the rules of evidence in criminal cases are designed not only to permit to the fullest extent possible relevant evidence to be adduced for consideration by the jury, but they are also designed to exclude from the jury's consideration matters which are unduly prejudicial and of slight, if any, relevance.

As to your concern that you did not have sufficient time over the six days of deliberation to perform your service as a juror in a manner which satisfied you, I am sorry that you have that feeling. I was not aware nor made aware at the time of such concern on any juror's part in this case. Indeed, I and lawyers in the courtroom were highly gratified at the careful concern that the jury gave to the testimony and exhibits and the specificity with which you requested the reading of testimony as you considered the various charges of the indictment. While the evidence was extensive in terms of the time taken to receive it, it was relatively limited in subject matter and had been, I thought, excellently reviewed for you by eight days of attorneys' summations and by you in your six days of deliberations. Also, I trust, the Court's marshaling was of some assistance.

From my vantage point, I believe you can feel complete satisfaction in the carefulness of the performance of your duties by you and your colleagues. This is evident from the clear distinctions you made as to certain defendants and certain charges and the fact that after obviously lengthy and careful consideration of the issues, various of your number conscientiously maintained differing views as to one defendant on all charges and another defendant on certain counts, while finding the latter defendant guilty on other counts. All of this I regard as being in the highest traditions of jury service.

I trust that these remarks in some measure are a fair answer to your sincere and troubled letter.

Yours very truly,

372 Central Park West
New York City, N.Y. 10025
DECEMBER 18
[redacted],1976

Judge Richard Owen
United States District Court
Foley Square, N.Y.C. 10007

Dear Judge Owen:

I wish to express my profound concern and disappointment regarding your considerate answer to my letter dated Nov.27, concerning the trial I served as juror, charging 22 defendants with a federal narcotic conspiracy. Your letter has caused me great disturbance.

The way the judicial system appears to me now is that not only is it impossible to achieve justice under the existing court rules for the jury but that justice may have failed to have been achieved in the past, and even worse, if steps are not taken immediately, at this very moment, a miscarriage of justice may be taking place anywhere under our system, which was founded on the concept of liberty and justice for all.

To make this more specific, I have listed a number of non-functional discrepancies in the jury system as I experienced it as forewoman of a jury.

The transcript was available to others of the court for their own purposes. We, the jury, also needed to read and evaluate the transcript for ouselves yet were refused access to it at any time. It was the jury's obligation to pass judgement on the defendants, based on the evidence contained in the transcript. This was the law.

The fact that I could not take down notes during the trial, added to the fact that the transcript could not be brought into the jury room, prevented an easy referal on my part especially, during the deliberation of facts that could not be specifically remembered amidst the crossfire and disagreements of jurors' opinions. Points contained in the transcript would have clarified the issues for me and enabled me to refute or confirm the more definite recall of other jurors. Instead of this, I was,....forced to base my conclusions, as I was advised to, on my best recollections, which in my opinion were not adequate under the prevailing conditions. Ultimately, I was compelled to go along with the opinions of the other jurors.

The issue here is one of court procedure which in my estimation made it impossible for me to arrive at my own just verdict under the existing conditions especially, but not only because of, but also due to a multitude of 22 defendants being tried together.

For this reason, when any of the defendants appeal their conviction through the court, in my estimation, they should have that right in the light of what I have herein stated concerning the jury procedure. Since, I, a juror, was prevented from issuing a just and unbiased verdict following my own conscience, that right to appeal is self-evident.

I am awaiting an immediate reply to this letter because what is at stake here is more important than myself or the procedure of the court. The American system of justice is herewith on trial.

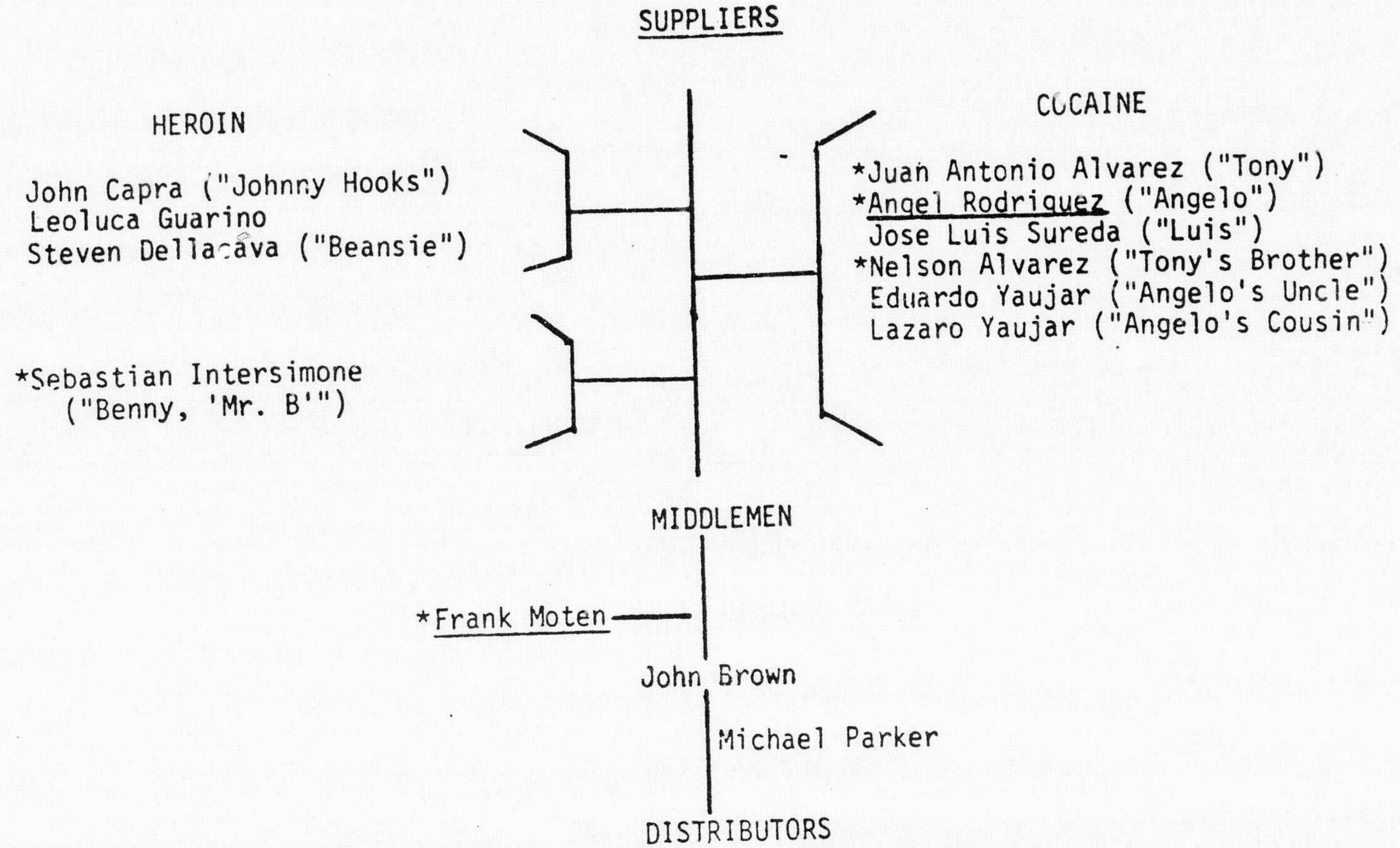
Respectfully yours,

Isabelle Blau

Isabelle Blau

Did Owen ever reply to this letter?

A-138



SUPPLIERS

HEROIN

John Capra ("Johnny Hooks")
Leoluca Guarino
Steven Dellacava ("Beansie")

*Sebastian Intersimone
("Benny, 'Mr. B'")

COCAINE

*Juan Antonio Alvarez ("Tony")
*Angel Rodriguez ("Angelo")
Jose Luis Sureda ("Luis")
*Nelson Alvarez ("Tony's Brother")
Eduardo Yaujar ("Angelo's Uncle")
Lazaro Yaujar ("Angelo's Cousin")

MIDDLEMEN

*Frank Moten

John Brown

Michael Parker

DISTRIBUTORS

WASHINGTON, D.C.

*William Hightower
*Sidney Foster
("Chinch")
*Joseph Sampson
("Bootnose")
*Lois Sampson

NEW YORK - NEW JERSEY

*Bernard Brightman
Solon Glaze
*John Morris
("Papers")
*Lawrence Mitchell
("L.J.")
Willie Womack

*Don Wilson
*Albert Lee Jones
("Al from Norfolk")
*James Laws
("Tobe the Robe")
*Charles Cowpers
("Chi")
*Marion Dunmore

*Tommy Davis ("Bipty")
*John P. Morgan ("J.P.")
*Raphael Bonilla
("Spanish Michael")
("Little Michael")
Helen Kellem ("Pam")
Ann Reynolds
(Lois' Sister)

CHICAGO, ILL.

*Yvonne Alvarez
Schennault
Al Williams
("Big Al from Chicago")
*Donald O'Dood

LE

MASTER
NARCOTIC CONSPIRACY
WHEEL

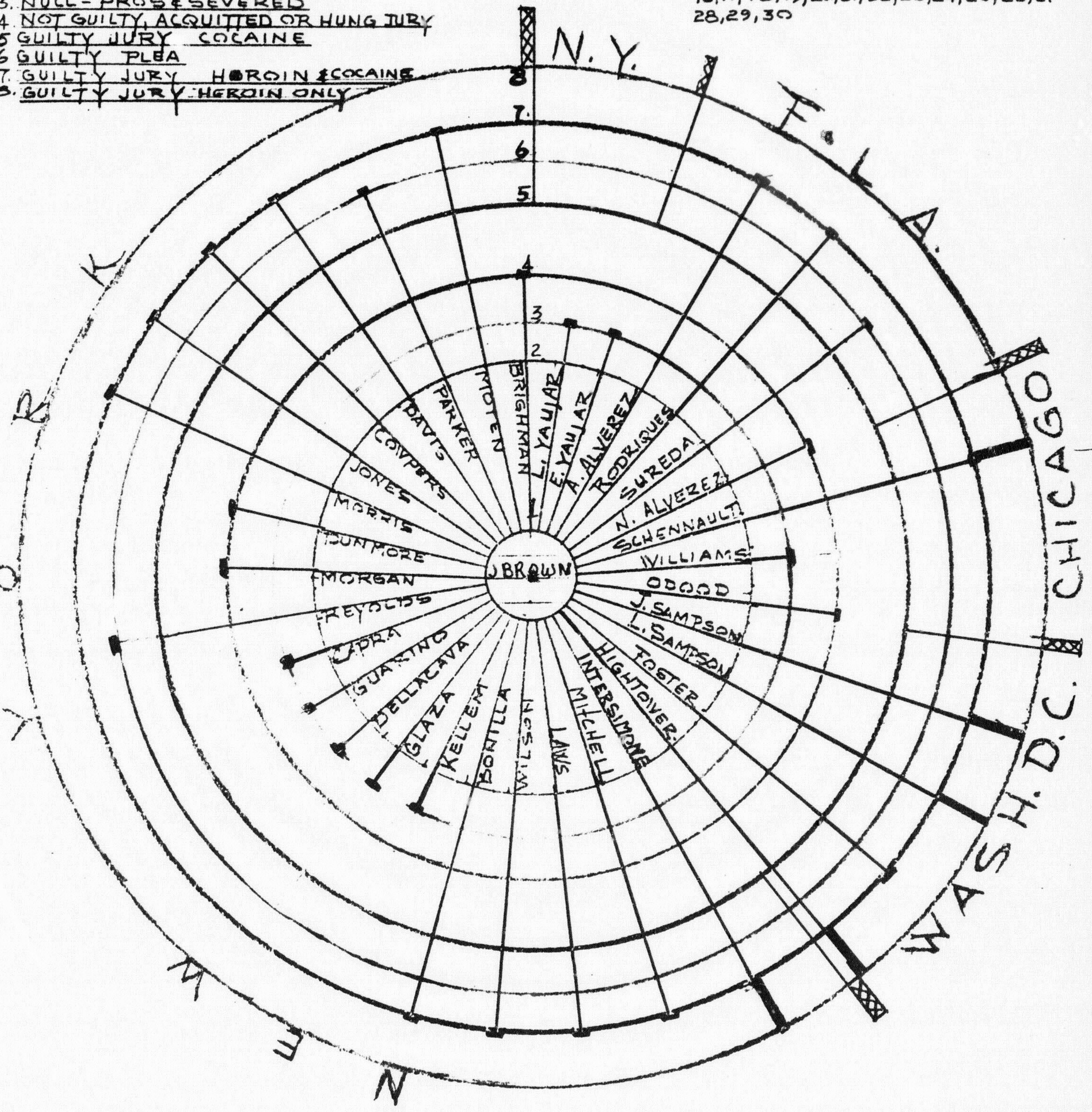
A-139

EGEND:

CONSPIRACY, HEROIN & COCAINE
FROM INTO OUTER RIM REPRESENTS
1. HUB OF CONSPIRACY
2. INDICTMENT COMPLETE
3. NULL-PROS & SEVERED
4. NOT GUILTY, ACQUITTED OR HUNG JURY
5 GUILTY JURY COCAINE
6 GUILTY PLEA
7. GUILTY JURY HEROIN & COCAINE
8. GUILTY JURY HEROIN ONLY

COUNT #1 &
SUBSTANTIVE

2,3,4,5,6,7,8,9,10,11,12,13,14,15
16,17,18,19,20,21,22,23,24,25,26,27
28,29,30



N.Y.
F.L.A.
CHICAGO
WASH. D.C.
NEW YORK
1
2
3
4
5
6
7
8
J BROWN
BRIGHMAN
L. YAUJAR
E. YAUJAR
A. ALVEREZ
RODRIQUES
SUREDA
N. ALVEREZ
SCHENNAULT
WILLIAMS
ODOOD
J. SAMPSON
L. SAMPSON
FOSTER
HIGHTOWER
INTERSIMONE
MITCHELL
LAWS
WILSON
BONILLA
KELLEM
GLAZA
DELLACAVA
GUARINO
CAPRA
REYOLDS
MORGAN
DUNMORE
MORRIS
JONES
COWPERS
DAVIS
PARKER
MOTEN

SHEET #1 OF #4

By LAM

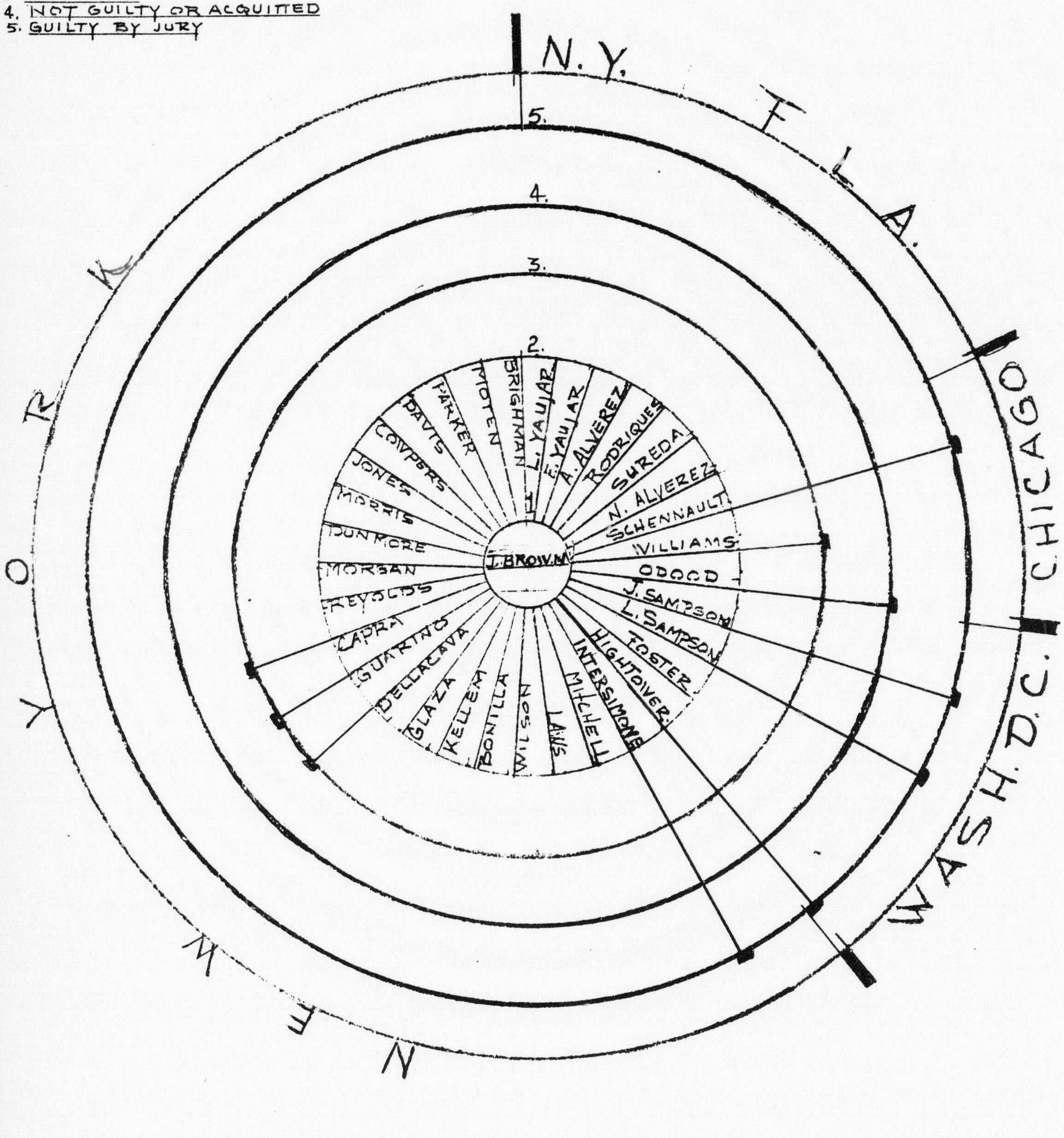
NARCOTIC CONSPIRACY

WHEEL

A- 140

LEGEND; HEROIN
INTO OUTER RIM REPRESENTS
1 HUB OF CONSPIRACY
2. INDICTMENT COMPLETE
3. SEVERED
4. NOT GUILTY OR ACQUITTED
5. GUILTY BY JURY

SUBSTANTIVE COUNTS . . . 12, 13, 16, 17, 20,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I. BROWN
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L. YAUJAR
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A. ALVEREZ
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N. ALVEREZ
SCHENNAULT
WILLIAMS
ODOOD
J. SAMPSON
L. SAMPSON
FOSTER
HIGHTOWER
INTERSIMONE
MITCHELL
SIMS
WILSON
BONILLA
KELLEM
GLAZA
DELLACAVA
GUARINO
CAPRA
REYOLDS
MORGAN
DUNMORE
MORRIS
JONES
COWPERS
DAVIS
PARKER
MOTEN

SHEET *4 OF *4

BY LAM

NARCOTIC CONSPIRACY WHEEL

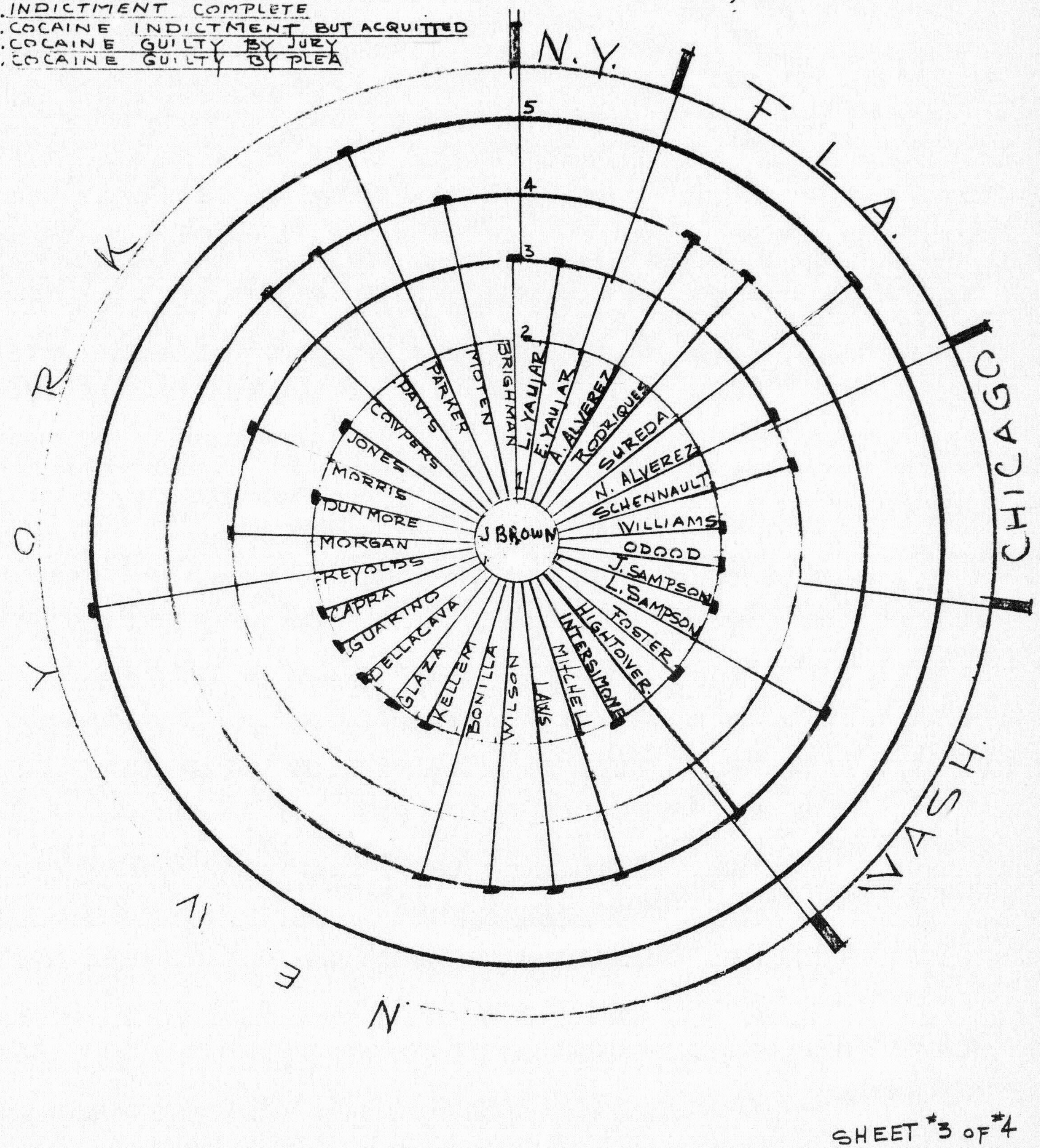
A-141

LEGEND: COCAINE

INTO OUTER RIM REPRESENTS

1. HUB OF CONSPIRACY
2. INDICTMENT COMPLETE
3. COCAINE INDICTMENT BUT ACQUITTED
4. COCAINE GUILTY BY JURY
5. COCAINE GUILTY BY PLEA

SUBSTANTIVE COUNTS 2,3,4,5,6,7,8,9,10,11,14,15,17
18,19,21,22,23,24,25,26,27
28,29,30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BRIGHMAN
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ODOOD
J. SAMPSON
L. SAMPSON
FOSTER
HIGHTOWER
INTERSIMONE
MITCHELL
LAWS
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BONILLA
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GLAZA
DELLACAVA
GUARINO
CAPRA
REYOLDS
MORGAN
DUNMORE
MORRIS
JONES
COWPERS
DAVIS
PARKER
MOTEN

SHEET #3 OF #4

By LAM

T4 am hps

MR. RICHMAN: May I proceed, your Honor?

THE COURT: We are going down the order at this point.

MR. KEEGAN: Your Honor, I have already submitted to the Court memorandum of law, resume of the evidence as I have interpreted it against defendant Intersimone. i have given the Government a copy of that memo. I'm sure they will respond if there are any errors, omissions or deletions.

My claim essentially is there is at least a separate conspiracy with regard to Mr. Intersimone. I make that argument on the basis that over the nine-year course of this conspiracy the evidence shows that he engaged in one transaction in 1970 or '71. That transaction, in addition, related to heroin. I think it's a freat leap in logic as the Government is arguing that he is by virtue of that transaction a member of one signle, all-inclusive, overall conspiracy involving suppliers of cocaine from Miami on the basis --

THE COURT: Let's broaden this out a minute.

The jury could find that Mr. Intersimone knew that Jack Brown had an apparatus in existence in the year 1971 that was adequate to distribute five or eight kilograms, depending upon which you credit.

MR. KEEGAN: Between three and seven.

THE COURT: Three and seven of heroin, a substantial amount of heroin.

MR. KEEGAN: That's correct, your Honor.

THE COURT: Aren't there authorities in our circuit that say even a single act, while a single act does not make one a conspirator, absent other factors, that if the size of the transaction is substantial, the jury may conclude from that, that one is joining an ongoing operation aware of its size and nature by the very size of the input?

MR. KEEGAN: I think the jury can fairly infer form the size of the transaction that Intersimone was aware that Brown had an apparatus to dispose of three to seven kilos of heroin. Brown testifies as to how he disposed of it. He names the individuals to whom it was sold. It is not necessarily Intersimone. We know the names of the people. It's inferable that he knew Brown --

THE COURT: And some of the people he disposed it to, that was also the cocaine and --

MR. KEEGAN: There is no evidence that he did.

THE COURT: Then your argument boils down to the fact you say there is a heroin deal and a cocaine deal.

MR. KEEGAN: There is loose knit vertical business organization at work here, as was said, and that is inferable from the one transaction. It is not inferable that by virtue of the one transaction he knew of horizontally situated other suppliers. It is true about 1975 Brown informed him he had other suppliers and Intersimone's response was "Don't do business with people from Pleasant Avenue, they will cross you."

That is hardly consistent with an intention to enter into the overall conspiracy alleged in this case. In fact, it's a renunciation.

THE COURT: Mr. Intersimone by entrusting Brown with four to seven kilograms of heroin, and I now assume all this proof is credited by the jury, assuming that, has to know Brown has been dealing in something he got with somebody or he never would have set up the apparatus to handle that.

MR. KEEGAN: His knowledge has to be determined from his own conduct, activities and statements.

THE COURT: Hasn't the Court of Appeals said that by dumping that part of heroin in it, the jury can conclude he knew of the existence of the apparatus also going?

MR. KEEGAN: They have also said that --

ps4

THE COURT: I would think Mr. Intersimone would not give a hundred thousand dollars worth of heroin using the smaller figure or $80,000 worth of heroin to somebody if he thought the fellow didn't know where to move it. That's the last thing in the world he is going to do.

MR. KEEGAN: I am conceding by virtue of this transaction the jury can infer Intersimone knew the apparatus --

THE COURT: Isn't that then enough?

MR. KEEGAN: You have to determine in the first instance whether there is a single overall conspiracy.

THE COURT: I have to determine whether the jury can conclude that.

MR. KEEGAN: If you determine there is insufficient evidence for the jury to believe beyond a reasonable doubt that the Government has proved the single overall conspiracy alleged, then you are required to give us a judgment of acquittal as to that count.

THE COURT: I will hear more argument on the multiple conspiracy, but I thought I made myself perfectly clear yesterday in stating that a jury can find that there had been cocaine input, Florida to New York, that went from '68 into '75.

ps5

MR. KEEGAN: I agree.

THE COURT: Involving Alvarez, Rodriguez and Brown, and collateral people.

MR. KEEGAN: The question is, does one by selling into that group on one occasion over nine years become a member, knowing participant of that conspiracy.

THE COURT: Hasn't the Court of Appeals said if the sale is large enough to warrant a jury finding that the seller knew of the apparatus, that would permit a jury to conclude he knew of the conspiracy and joined it, making it his own venture?

MR. KEEGAN: I don't believe they have said it in situations similar to the fact situation presented in this case. They have said it with ongoing transactions where the same drug is involved at all times or continuing relationship. Here we have one sale over nine years of a different drug than we both agree was involved in the overall conspiracy alleged, namely, the cocaine conspiracy. The Court of Appeals also said it is essential to determine what kind of an agreement or understanding existed as to each defendant.

Mr. Intersimone had no knowledge of any cocaine deals from the evidence. How could he possibly have agreed or how can the jury infer that he agreed to join this overall conspiracy, the existence of which was unknown to him from the basis of the evidence that we have heard here.

THE COURT: The existence was known to him because he trusted the apparatus to be able to merchandise, gettting the money.

MR. KEEGAN: That would allow to infer Brown had sources for distributing the heroin.

THE COURT: The jury can find Mr. Intersimone assumed they had.

MR. KEEGAN: U.S. aainst Falcome says a man has to make the conspiracy his own. He has to do something to advance it. Intersimone had a separate transaction and all he was concerned about was whether his deal went through and he got the money that he was due on the transfer of that heroin. It is a separate conspiracy. He didn't know whether Brown --

THE COURT: Let me reserve decision and I will read your memorandum carefully.

MR. KEEGAN: Just one other thing, your Honor. Well, two other things.

I renew my motion to strike Parker's testimony relating to the conversation he had with Brown. This appears on page 3305 in the record where Parker said, I

ps7

think it was early in 1972 Brown told Parker that he had had other sources of heroin, that he used to get heroin from Mr. B and Mr. B got in trouble. I submit, your Honor, that is not a statement in furtherance of a conspiracy. It is narrative, Brown relating what had been in the past to Parker. That was nothing other than give information to Parker, no intention Parker should follow up in any way or contact Mr. Intersimone or himself engage in deals with Mr. Intersimone. It was more narrative and I submit it should be stricken from the record.

In addition, your Honor, I have argued before unsuccessfully, and I argue again that the $20,000 fraud loan that Mr. Moten obtained from Fiumara in Boston, should not have been admitted in evidence in this case. It has nothing to do with narcotics. The only connection, tenuous as it is, the Government could make, is that Brown claims to have recently given Intersimone a great deal of money surrounding the fall of '70 or '71 narcotics transaction.

Brown testified that Intersimone asked Brown to obtain a loan fro him, exchange bad money for good money, whatever that may mean and Intersimone gave back $20,000 and got a check for $20,000. The Government investigated that as an income tax fraud case, income tax

ps8

evasion case. They used IRS agents to investigate that. There is waiting in the wings an income tax case. That's what it's all about. It is an income tax evasion scheme. The coincidence or happenstance that the money may have been derived from narcotics, and the Government hasn't proven that, is not sufficient to bring that within the ambit of this conspiracy account. It is totally unrelated.

THE COURT: Don't you think it's important to corroborate that Jack Brown who says I paid him money by showing that Mr. Intersimone is troubled with how to get that money in form in which he can use it without the IRS people hanging around his neck --

MR. KEEGAN: Mr. Interimone reported $60,000 in income that year. He had no problem showing income. Sure it's important to corroborate Brown. That's why the Government has done it. They corroborated him out in left field, in a transaction not tied to this conspiracy.

THE COURT: I disagree. I think the jury can tie it into the conspiracy. I deny both of the motions to strike.

MR. BELLER: Your Honor, are there any witnesses present in the courtroom, and if there are, may they be excluded?

rmh 20

because I was concerned with the flow of it and I remember his -- it was the lawyer instructing him to testify but nothing to do with committing perjury in so testifying. Does that make a difference?

MR. KRIEGER: Yes, your Honor.

THE COURT: Wait until we see the transcript in the morning.

Anything further?

MR. KEEGAN: Your Honor, Mr. Beller has an application to quash a subpoena I issued, I believe.

b4

THE COURT: I am sorry?

MR. KEEGAN: Mr. Beller tells me he has an application to quash a subpoena I issued on the Washington District Attorney's office, or the federal attorney's office.

MR. BELLER: Yes.

THE COURT: All right.

MR. BELLER: I think we can do this -- I don't think this requires everybody.

THE COURT: Well, counsel are prepared to hear it. I better have a copy of the subpoena so that I know what you are talking about.

MR. KEEGAN: Mr. Beller has the only one extant, your Honor.

THE COURT: May I take that from you, Mr. Beller?

MR. BELLER: Yes, your Honor.

I received a telephone call yesterday, the attorney in the U.S. Attorney's office in Washington and they were served with that subpoena and it is apparently returnable today. The notes I made show it is a subpoena for transcripts, brief on appeal, court orders and/or decisions with respect to Mr. Brown's 1960 Washington conviction, and a subpoena for notes, memoranda, grand jury testimony and correspondence and the complete office file. I don't have the subpoena before me but just the notes I made from the telephone conversation.

With respect to the first items I mentioned, these all appear to be public documents and those should be available in the courthouse in the Clerk's office. The other matters appear to be internal document memoranda which are not disclosable, are not subject to subpoena. So I don't believe there is any basis for the subpoena and we would move to quash on that basis.

THE COURT: Are you saying that although certain material may be available in a Clerk's office that if it is otherwise producible that that means that one may never go to the United States Attorney's office to get it? Is that what you are saying to me?

MR. BELLER: If they want the brief on appeal and it is a public document filed in the Clerk's office --

THE COURT: Then the U.S. Attorney's office is immune from responding? Is that what you are saying?

MR. BELLER: Yes.

THE COURT: I am not aware of any such doctrine, just because you can't get it in one place you cannot get it in the U.S. Attorney's office if there is no privilege.

MR. BELLER: It is strange that the burden to recover the documents should be shifted from counsel to the government. He is not hiring the government to go find his documents for him, it is a public record and he can get it from the Clerk's office. Why should the government have to be in the employ of a defendant or defense counsel to do his leg work?

THE COURT: No, this is a government agency that is in possession of materials which are properly subpoenable, in certain measure. Why shouldn't they respond to it? They have paid their fees and they are like any other citizen, are they not?

MR. BELLER: Presumably any other citizen in possession of documents, or they may be in the possession of several people, but it is not equally available to the person requesting the documents, and these public documents, it seems to me, are not subject to subpoena when the defense

⑧

UNITED STATES OF AMERICA
v.
JUAN ANTONIO ALVAREZ, et al.

August 26, 1976,
10:15 A.M.

(Trial resumed)

THE COURT: Before we bring the jury in, Mr. Keegan, you made an application -- rather, the government moves to suppress your subpoena, to quash your subpoena, on the United States Attorney for the District of Columbia, and my feeling, considering that overnight, is that that motion should be denied. It seems to me that while there are many cases, and I was given one case by the United States Attorney to the effect that if the materials could be gotten elsewhere you couldn't go to a prosecutor's office and, curiously enough, I happened to be the Assistant on that case and I happened to win it.

Nevertheless, that had to do with pre-trial discovery, as I see it, and we are now in a trial situation. You also have, as I understand it, a subpoena to the Clerk of the court.

MR. KEEGAN: I do, your Honor.

THE COURT: What I am going to do, I am going to direct that this subpoena be honored in that the materials be available. If at such time as you get to the position where you want to use them, if the Clerk of the court has not responded fully to your subpoena to him, then you will have demonstrated the due diligence that would then require the government to give you what it has.

I think that in order to enable you to do that and having spent $67.50 in serving the subpoena, that the government ought to comply with it in Washington and get the materials here before the court and I will deal with their turnover at the appropriate time.

MR. KEEGAN: I am sure Mr. Beller will make a call to Washington so that they will be available.

MR. BELLER: Your Honor, I agree with you, but in your former reincarnation. I don't have the subpoena. Could I have the subpoena back?

THE COURT: Yes.

Bring in the jury.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

JOHN T. BROWN, resumed.

THE CLERK: Mr. Brown, you are still under oath.

THE WITNESS: Yes, sir.

CROSS EXAMINATION CONTINUED

BY MRS. ROSNER:

Nowhere in that entire discussion does he put Mr. Cohn's client as a member of that group, and that's been available to Mr. Cohen, and I should say that whatever inference Mr. Cohen is trying to draw is not one that is in the witness' mind and we would show it afterwards. I want that factual record down here in view of the Court's ruling.

THE COURT: All right.

MR. BELLER: In order to establish such an inference, Mr. Cohn would have to prove that his client was a member of this organization to show that that is why the witness wanted him in this trial even though the witness never in his life belived that that was the case.

MR. COHN: All I have to show is the state of mind. If he says the witness doesn't believe it and that comes out, that is the way it will be.

THE COURT: Mr. Keegan, I had thought when you rested your cross-examination that you sort of abandoned this Washington thing because normally I would have expected you to say that you hadn't gotten those materials.

MR. KEEGAN: Your Honor, I only did not do so because of the number of things that were going on.

I certainly intended and I would like to now.

THE COURT: I am going to permit you to get int it. You may cross-examine further on that one item if you feel so inclined.

Have either of those subpoenas been honored?

MR. KEEGAN: Neither one. I have gotten no word from the District Court Clerk in Washington.

THE COURT: How about the U. S. Attorney's office in Washington?

MR. SEAR: I would like to place on the record that after your ruling at the luncheon break I placed a call down there.

Later that same day I placed another call down there advising them of your Honor's ruling. They were aware, obviously, of the existence of the subpoena beforehand. They are aware of their obligation. I don't know what --

THE COURT: When are they going to honor their obligation?

MR. SEAR: I don't know. This morning is the first time Mr. Keegan has come back in terms of -- I can call down there. I know originally, I think when they spoke to Mr. Beller --

THE COURT: Mr. Sear, would you please tell them that I would like to have an authoritative representative of the U. S. Attorney's office in the District of Columbia here tomorrow morning to tell me what has been done with regard to that subpoena?

MR. KEEGAN: Might I suggest he bring with him whatever materials he has gathered up?

THE COURT: I will expect him to bring with him the materials, if they are available, or be in a position to tell me why they are unavailable, if that is indeed the fact.

MR. BELLER: Mr. Adelman is the Assistant who is handling this matter in Washington. He called me upon receipt of the subpoena. I told him hold on to it, I am going to make a motion to quash the subpoena.

We came to court, we had a ruling from the Court. I don't remember whether it was Thursday or Friday, in the morning.

THE COURT: Thursday.

MR. BELLER: At the luncheon break Mr. Sear and I called his office and he wasn't in, he was out ot lunch. We advised him, his office, that the Court had denied the motion to quash, that they have to comply with the subpoena.

When I returned from court there was a message that Adelman had called. I called back either that evening or the following morning, which would have been Friday, I guess, and he was in court. I advised the secretary again that they should comply with the subpoena and get together all the documents.

Now, today is Monday. All the record centers are closed. It is an awkward situation, your Honor. It is not a situation that the man has the files across the hallway from him and he can get them. He has to request the files from whatever record center they are in, and I am sure he is doing that.

THE COURT: He had Friday, he now has Monday, and it seems to me he has had 48 hours.

MR. BELLER: I know if this request were made to me, and it has happened to me in cases, in fact this case, when I wanted to get old files, files that are closed are sent to a national record center. In this region they are sent to Bayonne. You can't get these records quickly. It takes time even when you tell them to please rush because the subpoena was gien on Tuesday and returnable Wednesday. He had two days to comply with the subpoena.

So I am sure that he has made the request and I will call him at the luncheon recess or shortly after to make sure that he is in the office and find out exactly what the status of it is and we will report back to the Court but I know --

THE COURT: Report to me at 2.15 or whenever resume this afternoon.

MR. BELLER: One problem we have additionally is all the hours we are free to talk to people they are not in the office because they are usually out to lunch. We get back at one.

THE COURT: Mr. Beller, I go along with you up to a point.

MR. BELLER: Give me an extra ten minutes.

THE COURT: I don't know how many Assistants there are there, but it gets to a point where there is a United States Attorney and, if necessary, we will get the United States Attorney to do it personally.

MR. BELLER: Ansolutely. All I am saying is I would like an additional ten minutes or so in case it runs over.

THE COURT: I appreciate everybody is hard working but I do not want to feel we are being slighted here.

MR. SEAR: I don't think we are being slighted.

THE COURT: If Mr. Adelman has to go to court, somebody else can pick it up.

MR. BELLER: I didn't mean that. They are conscientiously working on this problem. The day he got it he called me on it. It wouldn't happen in our office. Things take much longer in our office than they do, apparently, in Washington.

MR. KEEGAN: My investigator flew down there on my instructions on Tuesday, went to Maryland, where the record center is located, and pulled out portions of that file for me and made copies and returned them. If he can do it in one day, certainly the Government, with all of its agents, can do it.

THE COURT: Where are they?

MR. BELLER: If you have the file, why the subpoena?

MR. KEEGEN: I have portions, I don't have the entire thing.

THE COURT: Mr. Keegan has now told you where the file is locaeted. Please pass that on to the United States Attorney's office so someone may go there and pull the file and put it under his arm and bring it here.

MR. BELLER: I want to note that in my opinion this is preposterous. Mr. Keegan tells us he or an investigator went there, he had the file, and the reason he doesn't have the information now is that his man couldn't make copies of it so the Government should go and make copies. I think that is preposterous. I should tell the Assistant he should waste his time and go to Maryland and get the file.

THE COURT: He can send a clerk.

MR. BELLER: If his office like our office, there are no clerks. They write out their own stuff, They Xerox their own stuff. There are no such things as clerks to do that stuff.

THE COURT: If you were told to deliver a file to Washington --

MR. BELLER: I would do it myself because that is the only way it gets done. Otherwise it takes two or three weeks. I think it is preposterous when Mr. Keegan's investigator is there with the file in his hands that he can't Xerox the file, so he gives a subpoena to the U. S. Attorney so he will send an Assistant down to Xerox the file.

MR. KEEGAN: We are not asking him to Xerox it. We are asking him to bring it here. It would take four days to Xerox the file.

THE COURT: Mr. Keegan justifiably is concerned with the best evidence rule, he is concerned with the authenticity of the exhibits.

MR. BELLER: Mr. Keegan's interest in this file is as follows:

He wants to know if Mr. Brown, in the 1960 case, which is 16 years ago and which actually, if the Government had insisted, wouldn't have been admissible in this trial, the conviction, he wants to know if Mr. Brown at that time told anybody that his source of heroin was someone other than the defendant Intersimone. That is the most he expects to find in this file. Even if he finds that, your Honor, that wouldn't prove anything. Even if he found that, it wouldn't prove anything. Even though the defendant told me the source was Intersimone, he hasn't testified to that in this case out of an abundance of caution.

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Mr. Keegan tells us it will take four days to Xerox and he wants the Assistant to gover and spend four days Xeroxing the file that doesn't contain information Mr. Keegan doesn't want, the source for his heroin in this case is Vito Genovese.

THE COURT: Mr. Beller, I do not want you to confuse what is apparently a distressing abuse of Government's lawyer's time for which I have nothing but regrets, I don't want you to confuse that with the requirement that a subpoena be honored. All I am talking about is that a subpoena be honored. It seems to me that if there is a file somewhere that counsel arguably feels is appropriate, he ought to have it. I am distressed that you tell me an Assistant has to bring it, but let's not get off into the emotional issue of wasting a Government lawyer's time. We are talking about honoring of a subpoena.

MR. BELLER: It is not just the honoring of a subpoena. The man has to go and find internal notes, memoranda, documents, grand jury testimony, trial testimony, preparation for briefs on appeal, the Government's briefs, the defendant's briefs on appeal, petitions for certiorari, half of which are matters of public record, half of which are privileged information anyway. There has been no showing of materiality in this case, nothing other than get an Assistant United States Attorney to get all the stuff together in one day.

THE COURT: I say I regret the latter statement but that doesn't obscure the former.

MR. BELLER: I believe that is the reason why ordinarily in a case like this, first of all, matters of public record don't -- the Government is not responsible.

THE COURT: The United States District Court Clerk hasn't honored its subpoena either.

MR. KEEGAN: I will hand that up to the Court.

MR. BELLER: I think your Honor can appreciate that if the Clerk in a busy District Court gets a subpoena one day and it says, "Give me these records tomorrow," I think the Court can appreciate that that kind of subpoena can't be complied with.

I give subpoenas to banks and so forth and say they have to be complied with in two weeks, and they say, "I am terribly sorry. It can't be done. We are happy to work on your subpoena but it can't be done in two weeks or two days."

MR. KEEGAN: That is why I put my phone number on subpoenas. My instruction to an investigator is call my office and give them additional time. I haven't even gotten the courtesy of a phone call, and it is over a week, and all this is in a District Court's office.

THE COURT: Give me a report a quarter past two.

Mr. Keegan, will you tel them where it can be located?

MR. KEEGAN: If they can get a clerk to bring it up and save an Assistant's time, fine.

THE COURT: We will take a short recess.

(Recess.)

(In robing room.)

THE COURT: I am ruling on certain 3500 material which is being marked and sealed as Court's Exhibit 4.

(Not transcribed.)

(In open court.)

THE COURT: Jury enters courtroom.)

CROSS EXAMINATION

BY MR. COHN:

Q Mr. Brown, I am Fred Cohn.

Mr. Brown, I show you Government's Exhibit 66 in evidence and ask you to look at it.

You testified, did you not, that most of the entries on that calendar, that personal telephone directory, were not made by you, is that correct?

A That's right.

Q They were made by -- is it Jan Brown?

A Yes.

Q Do you know when they were made?

A No, Counsel, I don't.

Q Well, there is at least one entry that was made by you, is that right?

A That's correct.

AFTERNOON SESSION

(2.15 p.m.)

(Jury not present.)

MR. BELLER: Should I make a statement about Washington?

THE COURT: Anything startling?

MR. BELLER: I see Mr. Keegan isn't here. Mr. Intersimone is not here either.

THE COURT: Tell me.

MR. BELLER: I should tell you?

THE COURT: Yes.

MR. BELLER: I spoke to Mr. Adelman in the U. S. Attorney's office in Washington. I advised him of the Court's ruling again.

He said the papers had been sent up to Mr. Collins, who was the Chief of the office. He said he would make a request for an expedited transfer of the files from -- I can't remember the files from -- I can't remember the place now in Maryland -- to his office, and I advised him that anything that he had and anything that he got he should send to me directly or call me when he had it and I would have an agent go down and bring it to me.

I should say in my experience sometimes that ws.

takes several days or as long as a week or so.

I asked him to stay on top of it, and he said he would do that.

THE COURT: Mr. Beller, why must it take that long?

MR. BELLER: I think what happens is the request goes to the record center in Maryland, they probably have some other requests that are also to be expedited, and they get to this as quickly as they possibly can.

I am sure he will tell them about the urgency the trial is going on, and as soon as they can get to it they will get the information. So it is a matter of which of the pressing requests they get to and in what order. They could get to it today. If there are others they could get to it in the next several days.

I told him about the importance of getting it. I said I wanted it definitely by the end of this week. He said he was going to put in the request right away and that we will get it as soon as he has it.

THE COURT: Mr. Beller, I am not in any way expressing any displeasure or misunderstanding of the Government's system, butw ould you please advise that I would like those documents here on Thursday morning or some body -- those are two words -- I wish a body here to explain why they are not. If they are in Maryland -- I am making that subpoena at this point a forthwith subpoena -- it seems to me that the District Court ought to be empowered to say to a Government agency who knows where the file is, "You get it here on the third day."

I don't think it is enough for an Assistant to say, "I will try to get it to you by the end of the week."

So Thursday morning, please, or I want somebody here who is authoritative to tell me why not. I am only making that as a statement. I am not expressing at this point any displeasure. I am just making a statement.

MR. BELLER: Fine, your Honor.

MR. RICHMAN: If your Honor pleases, there an organization that has been passing out comments on this trial.

THE COURT: What?

MR. RICHMAN: There is an organization that has been passing out printed comments on this trial which are highly inflammatory.

THE COURT: They are not doing it in front of the Court House, I hope.

MR. BELLER: Objection.

THE COURT: Mr. Baker, are you going to be much longer?

MR. BAKER: I think I probably will be a reasonable time.

THE COURT: We will recess until 10 in the morning. Continue to heed my admonition. Don't speak to anybody about the case. Continue to have an open mind. If anyone speaks to you, disregard it. Good night.

(Jury leaves courtroom.)

MR. BELLER: Could I stay with Mr. Keegan for one moment?

THE COURT: Yes, sir.

MR. BELLER: I should relate I spoke to Mr. Collins in the United States Attorney's office in Washington, D.C. He is the Chief. He is apparently second to Silver, the U. S. Attorney. He has been handling this matter of the subpoena.

He told me that he sent a man over to the -- this morning he told me he would have the record and I said we will send an agent down to pick it up. He sent an agent down to Shitland, Maryland, to pick up the file and the man was told that the U. S. Attorney's record jacket, the folder, had been destroyed in April of 1976 in the course of routine destruction. When cases are 15 years old they are destroyed. So I said, "Are you sure?"

He said, "Yes."

He gave me the number of the person to call and so on.

I said, "I understand a defendant's investigator had seen part of the file.

He said he may have seen the Court file but he is informed the U. S. Attorney's file has been destroyed.

I believe Mr. Keegan will vouch for the fact that the investigator did in fact see the Court file.

Is that right, Mr. Keegan?

MR. KEEGAN: That is correct.

MR. BELLER: It seems that the U. S. Attorney's file was destroyed in April, 1976. I asked Mr. Collins to please locate the Court file. I told him a subpoena had been served on the Clerk and the Clerk hadn't complied, would he please get the Court file and make that available to us. He said he would do that right away.

All I would ask is whether, in view of the fact that the investigator has already seen the Court file, whether that is still the request of Mr. Keegan.

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MR. KEEGAN: Your Honor, I would request rather than the Court file -- my investigator has seen it and there is nothing useful in the Court file for me -- but in view of the fact that the indictment in this case came down in April of 1976, the precise month in which Jack Brown's Federal case was destroyed, that some representation be made by the U. S. Attorney for the District of Columbia regarding the common practice of destroying records after 15 years and maybe something a little more precise as to when, how it is done. May I am becoming paranoid that when an indictment comes down, a witness' whole record is destroyed.

MR. ANOLIK: I might add for what it is worth, although Mr. Keegan has been seeking to subpoena records, all the defendants would have requested to make use of it, your Honor.

THE COURT: Mr. Beller, can we have some kind of affidavit from the custodian of those records as to the practice?

MR. KEEGAN: And the particulars as to who ordered this record destroyed and exactly when it was destroyed and by whom, at whose direction.

THE COURT: I think I would like to see an affidavit to that effect.

MR. BELLER: I will do that.

THE COURT: Upon receipt of that, that probably will end this matter, but we'll see.

MRS. SOLLEDER: On behalf of the defendant Dunmore I have a request of the Government.

Government's Exhibit 122, which is a letter of immunity, refers to the proceedings asking the Attorney General to confer this on Mr. Brown. I think we are entitled to the underlying documents as to the conferring of immunity on the witness. I am requesting inspection. It is referred to explicitly in the exhibit they had applied for immunity pursuant to Section 6001 and 6003. If that would be accompanied by an affidavit from the U. S. Attorney, your Honor, it might be informative.

THE COURT: It might be informative but are you entitled to use it against this witness?

MRS. SOLLEDER: don't know if I want to use it. I want to look at it.

THE COURT: Why are you entitled to go into the Government's files if you cannot cross-examine the witness about it?

MRS. SOLLEDER: I would like to know the scope of the immunity the Government sought to obtain for this man.

THE COURT: Anybody in disagreement? We'll recess until 1:30, and everybody have an early lunch.

MR. KEEGAN: A housekeeping matter, your Honor. I'm still awaiting the affidavit from the government with respect to the destruction of John Brown's earlier 1960 narcotics record from Washington, D.C.

MR. SEAR: I have been in communication with the people in the records center and they are getting the figures together, whatever it is, that they have to send the affidavit.

Let me also put on the record that two tiems that were referred to yesterday afternoon --

THE COURT: Just a minute. Since we're all in agreement, Mr. Dorsett, would you tell the jury they're excused, Mr. Rauschert is ill, and they're excused until 1:30 at which time we will have further news for them.

MR. SEAR: The complaint in the financial statement of Michael Parker available as 3500 material.

THE COURT: Very good. All right. Anything else?

MR. BELLER: Your Honor, could we see counsel just to discuss some possible stipulations before you go out?

THE COURT: Counsel are willing to meet with Mr. Beller and discuss this problem. Anything else? All right. Adjourned until September 15, 1976.

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A 174 [redacted]

AFTERNOON SESSION

(2.30 p.m.)

(In open court; jury not present.)

MR. SEAR: Your Honor, while we're waiting could I have two exhibits marked as Court exhibits? These had to do with the records of John Brown's case files that were subpoenaed by Mr. Keegan, and I've shown these papers to Mr. Keegan and they're two affidavits which evidence the fact that there were records destroyed as part of a general procedure.

MR. KEEGAN: I've seen them, your Honor, and I would like to have copies made by the U. S. Attorney for my records.

MR. RICHMAN: Your Honor, Mrs. Solleder went to Judge Ryan. I'll cover for her for a few minutes. He sent for her.

THE COURT: Is that agreeable, Miss Dunmore?

DEFENDANT DUNMORE: Yes.

THE COURT: Mrs. Solleder is now in.

MR. KRIEGER: Judge, may I just state that I have spoken with Mr. Beller and with the permission of the Court might I be excused for tomorrow morning?

I have to be out in the County Court, Suffolk County. I have been informed and do believe that there by mathematical certainty. Therefore the law in a criminal case requires that the guilt of a defendant be established beyond a reasonable doubt, not beyond all possible doubt.

Now, ladies and gentlemen, with those preliminary instructions, which I hope will be of some guidance to you in the days ahead, we will now have the opening statement from the United States of America.

MR. SEAR: Your Honor, at this time we are going to display the chart.

THE COURT: Very well.

(Pause.)

MR. SEAR: If it please the Court, ladies and gentlemen of the jury, my name is Thomas Sear and I am an Assistant United States Attorney.

Sitting at this table with me are Mr. Daniel Beller, and Miss Constance Cushman, who are also Assistant United States Attorneys. Together we will be presenting this case to you.

Also seated at the same table is Mr. William Kunz, who is a second year law student at Harvard University who has helped us in preparing this case and who will be with us until the end of this month, when he returns to school.

Ladies and gentlemen, as you've already heard, what this case is all about is narcotics, heroin and cocaine. What the evidence will show in this case is that these defendants, the people on trial before you, for a period of many, many years engaged in a massive conspiracy to violate the narcotics laws of the United States.

The evidence will show that they were the people at the top of the narcotics business in the eastern part of this country, the suppliers, importers, distributors of narcotics, which eventually, after being resold many times, made their way down to addicts on the street.

You will learn from the evidence that the sole reason for that business was to make the enormous profits that were available at the expense of the public and the addicts who bought and used the narcotics.

You will learn that beginning no later than 1968 and continuing up through 1975 these defendants on trial before you distributed enormous amounts of heroin and cocaine up and down the entire eastern seaboard of the United States, as far south as Miami, Florida, as far north as Boston, Massachusetts. And you will learn that the conspiracy extended as far westward as Chicago, Illinois.

You will learn in intimate detail every

aspect of how these people ran their business and how very, very successful they were.

But the evidence will show that during the period of the conspiracy enormous amounts of narcotics, literally hundreds and hundreds of pounds of narcotics, made their way down from the suppliers of the conspiracy to the middlemen, to distributors, to retailers, to lower level dealers, and eventually to addicts on the street. And at the same time, flowing up through that same chain was enormous amounts of money, money that started out as $1 and $5 bills, moneys that when it got to the distributor was turned into 10's and 20's and eventually, when the suppliers were paid for their narcotics, into 50's and hundreds.

The evidence will show that through the period of the conspiracy literally millions of dollars made their way up that chain and into the pockets of the defendants on trial before you.

The evidence will show that each of the defendants performed a critical role in insuring the success of this operation, for you will learn from the evidence that in 1968 a man by the name of Juan Antonio Alvarez, known to his friends as Tony, obtained an overseas source of cocaine, bulk cocaine, in South America and that with the aid of his partner, a man by the name of Angelo Rodriguez, known as Angelo, he reached out for a purchaser for that cocaine, reached out and found one in New York City, a man by the name of Jack Brown.

The defendant Juan Antonio Alvarez is on trial in this case, although he is not physically present in this courtroom. His attorney is here who will represent him in this trial and he is a defendant whose guilt or innocence you will consider.

His partner, Angelo Rodriguez, is the defendant sitting at this row of tables, the seventh gentleman down, in the brown jacket.

You will learn how, together, Tony Alvarez and Angelo Rodriguez were aided by others, were aided by Tony's brother, the defendant Nelson Alvarez. The defendant Nelson Alvarez is sitting at the table at the end of the el, the second man from the right, in the blue jacket.

You will learn how, once the cocaine got to Miami, Florida, it was hidden away and eventually transported to New York City in loads of 10 and 20 kilograms at a time. And you will learn what a kilogram is. It is simply a measure of weight and that a kilogram of cocaine or heroin is simply 2.2 pounds of narcotics.

You will learn what a quarter is and what an eighth is. A quarter of a kilogram is about a half pound of narcotics. An eighth is four and a half ounces.

You will also learn that there were other suppliers in this conspiracy, suppliers of narcotics, in this case heroin.

You will learn that a group of three individuals operating together throughout the conspiracy supplied heroin in bulk to Jack Brown, the same purchaser. Their names? John Capra, known as Johnny Hooks; Leoluca Guarino; and Steven Dellacava, known as Beansie.

Now, they are defendants named in the indictment in this case. But, as his Honor has already told you, they are not on trial. You will not consider their guilt or innocence.

You will also learn that throughout the conspiracy there was another heroin supplier, a defendant on trial before you, the defendant Sebastian Intersimone, known as Mr. B, or Beansie.

The defendant Intersimone is sitting in the corner of this group of people, the man with the green shirt, the man who just took his glasses off.

And you will learn how, after the heroin came jgs

down from the heroin suppliers, after the cocaine came down from the cocaine suppliers to Jack Brown, exactly what happened to it, how it was hidden away and what Jack Brown did with the cocaine. For in the narcotics world, narcotics just doesn't flow down, just doesn't pass hands. As it comes to a level, it is often cut. That is, you can change one kilogram of heroin or cocaine into three kilograms.

MR. ANOLIK: Objection to the testimony of the prosecutor.

THE COURT: Overruled.

Is this what you expect the evidence to show?

MR. SEAR: Yes, your Honor.

THE COURT: Overruled.

Go ahead.

MR. SEAR: How do you change a kilogram into three or four kilograms? Simply by adding some neutral substance. And why do you do it? What will the evidence show? Again, to make the most amount of money possible.

You will also learn from the evidence that Jack Brown's closest associate, his senior advisor, was a man by the name of Frank Moten from Englewood, New Jersey.

The defendant Frank Moten is present in this courtroom and on trial before you. He is the defendant with the glasses, against the wall to the far right. And you will learn how he did much more than merely advise Brown, for he was the banker, the banker for Brown and other narcotic traffickers involved in this conspiracy.

And you will learn in intimate detail exactly what it means to be a banker for narcotics dealers, and you will see that in truth he was a full service bank, for some of the distributors who bought narcotics from Brown were in fact Moten people, people that he financed and controlled.

The defendant Bernard Brightman is known as Nabe because he was Moten's neighbor in Englewood, New Jersey. The defendant Brightman is the sixth man down in this row of tables, the bearded man in the tanjacket.

You will also learn how there were other individuals closely associated and controlled by Moten. John Morris, known as Papers, was financed by Moten. The defendant John Morris is present in this courtroom and is sitting in that chair over there in front of the booth, the man in the blue jacket.

Lawrence Mitchell from Teaneck, New Jersey is another one of Moten's people. The defendant Mitchell is sitting in this courtroom today and on trial before you.

He is sitting in the front row, in the seats over here, the gentleman who just stood up.

You will see that there were other New York-New Jersey distributors: the husband and wife team of the defendant Charles Cowpers, known as Shi, and his wife, Marion Dunmore, known as Toni. They are sitting there, the two individuals sitting in that front row over there.

You will hear activities in New York and New Jersey of the defendant James Laws, known as Tobe. The defendant Laws is the last man in that row.

You will hear evidence about John P. Morgan, the defendant known as J. P. John P. Morgan is the man in the blue jacket with the green glasses on.

You will learn that the conspiracy extended way beyond New York City, however, for there were two teams of Washington distributors, the husband and wife team of Joseph Sampson, known as Bootnose, and his wife, Lois Sampson. Joseph Sampson is the second individual sitting in the front row over there, and his wife, Lois Sampson, is the third individual down in that row.

You will learn that the second partnership, closely associated with the Sampson team, was composed of the defendant William Hightower and the defendant Sidney Foster, known as Chinch, also on trial before you.

The defendant Sidney Foster is the third individual over here. The defendant William Hightower is the fourth individual down in that row.

And there are two Chicago distributors also on trial before you, the defendant Yvonne Schennault and the defendant Donald O'Dood. The defendant Yvonne Schennault is the third defendant up in that row. The defendant Donald O'Dood is the man with the black jacket and the white shirt sitting far against the wall over there.

In my haste I neglected to mention two other New York distributors closely associated together, you will see from the evidence, a man by the name of Albert Lee Jones and another defendant by the name of Don Wilson.

The defendant Albert Lee Jones is the second individual sitting up in the first row. The defendant Don Wilson is the far individual sitting at that table over there.

You will also see two more New York distributors. The evidence will show two more defendants distributing narcotics in New York, the defendant Raphael Bonilla, known to his friends as Little Michael or Spanish Michael, is the fourth individual sitting at this table here, the defendant with the purple tie.

And finally, the defendant Tommy Davis, known to his friends as Bipty, operating, again, out of New York.

Tommy Davis is seated, the fifth individual down in that row of defendants, the first row in the spectators section there.

(Continued on next page.)

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Now those, ladies and gentlemen, in a very hurried fashion are the people on trial before you and that in a very, very general sense is a picture of the criminal activity charged in this case, which the government will prove to you during the course of this trial.

At this time my purpose in speaking to you is really twofold. First of all, I will briefly review with you what the charges are in this case.

Secondly, because this trial will be a long one and because there will be proof concerning the activities of the 22 defendants on trial and many other individuals, activities involving hundreds of transactions that extended over a period of many, many years, I will review what the evidence will show in some detail.

First of all the charges. At the end of this trial, his Honor, Judge Owen, will explain the charges in detail to you, particular crimes charged and each element of each offense. He has already read to you charges from the indictment.

As he indicated, count 1 in the indictment is a conspiracy. What the evidence will show as to the conspiracy in this case was that it operated just like a business organization, but, in fact, certain of the conspirators didn't even know certain of the other conspirato but that they all worked together to accomplish a single goal, their mutual aim, and that was to make money by selling narcotics.

His Honor also read to you a second type of charge, counts 2 and 3 in the indictment, and they relate just to two defendants in separate counts, defendant Frank Moten and the defendant Tony Alvarez are charged with managing, supervising, controlling a continuing criminal enterprise. Groups of five or more people who engaged in a pattern of violating narcotic laws.

What does that mean in plain simle English? It means that they are charged with running their own narcotics operations, their own narcotics organizations and that they made enormous profits from them.

His Honor also read to you the various substantive counts contained in the indictment, that is, charges against one or more of the defendants that at particular times, on particular occasions those people possessed or distributed either heroin or cocaine.

Those are the charges, ladies and gentlemen, that are contained in this indictment, which is the subject matter of this case. The indictment that you will vote upon after you have heard all the evidence and have had his Honor explain the law to you.

You probably got an idea already, this conspiracy operated at different levels. The defendants on trial before you, you will see from the evidence, worked at the top three levels of this organization. To help you understand the scheme and organization of the conspiracy and how it worked, the government has prepared this chart that appears before you.

Now, I believe Judge Owen mentioned the fact, but I want to emphasize it again. This chart is not evidence. It was made up simply to help you understand how the conspiracy worked in part because of the large number of people involved in this case. If it helps you, use it. If it doesn't help you, disregard it.

You will also notice that there are names listed on the chart. Those are the names of the people named in the indictment as defendants and conspirators.

You will notice certain names have blue dots next to them. Well, there are 22 such blue dots indicating that those are the 22 people on trial before you in this case, the 22 people whose guilt or innocence you will have to consider on the evidence.

At the top you see the list of suppliers of narcotics.

The upper left-hand corner the heroin suppliers, Capra, Guarino, Dellacava and then Intersimone.

The evidence will show that the first three individuals supplied heroin to the conspiracy on a large scale from approximately March of 1970 until April of 1973.

The evidence will also show that Sebastian and Intersimone, known as Benny, Mr. B, was also a supplier of the conspiracy and you will hear evidence about transactions in which he played a pivotal role.

You will hear about a particularly important sale that occurred in the fall of 1971. That involved the sale of 3 kilograms of pure heroin with a purchase price of over $70,000. You will hear how Intersimone was paid for that heroin over the next few months.

You will also hear evidence as to financial transactions that the defendant Intersimone, again he is the man in the green shirt sitting over in the corner, you will hear evidence about financial transactions that he engaged in with the defendant Frank Moten, again the individual at the far right against the wall.

On the other side, you see the list of names of people the evidence will show were involved in supplying the cocaine to the conspiracy. I have already indicated to you the evidence will show that in 1968 living in Miami, Florida, Juan Antonio Alvarez, Tony Alvarez, began importing the other side of Mr. O'Dood. Could you sit on the other side of Mr. O'Dood and that will put you in the same line of sight as Mr. Rubinstein.

JOHN T. BROWN, called as a witness, having been duly sworn, testified as follows:

MR. BELLER: May I proceed, your Honor?

THE COURT: You may.

Mr. Brown, you are going to have to speak into this microphone that is in front of you.

DIRECT EXAMINATION

BY MR. BELLER:

Q Mr. Brown, this is a very large courtroom. I want you to keep your voice up and make believe there is even no microphone and speak in a voice loud enough so that the last juror here can hear you testify.

MS. ROSNER: Could the reporter move in just a little bit.

Q Mr. Brown, we have met before, have we not?

A Yes, we have.

Q Do you recall the first time that we met?

A October of 1975.

Q Since then we have met frequently between October, '75, and this time, is that right?

A Yes, we have.

Q Reviewed your testimony?

A Correct.

Q And other things of that nature?

A That's correct.

Q Mr. Brown, how old are you?

A I am 48 years old.

Q I'm sorry?

A 48 years old.

Q Tell the jury and the court where were you born?

A Washington, D.C.

Q Mr. Brown, did there come a time in 1960 when you were convicted of violating the federal narcotic laws?

A Yes, that's correct.

Q Did that involve the conspiracy to distribute heroin, is that right?

A Correct.

Q Where were you tried?

A In Washington, D.C.

Q What was the outcome of that case?

A I was sentenced and sent to jail.

Q How long were you in jail?

A For about 44 to 46 months.

Q A little less than four years, is that right?

A That's correct.

Q When did you go to jail?

A In 1960.

Q When did you get out of jail?

A 1964.

Q After you were released from prison in 1964, where did you go to live?

A New York City.

Q Mr. Brown, between 1964 and 1965 when you were released from prison and April 7, 1975, did you have any legitimate occupation?

A None.

Q How did you earn a living?

A By selling and buying narcotics.

Q What kind of narcotics?

A Heroin and cocaine.

Q Did you have associates in this business?

A Quite a few.

Q People who helped you?

A Yes.

Q People you bought drugs from?

A Yes.

Q People you sold drugs to?

A That's correct.

Q Mr. Brown,any significance to your mind to the date April 7, 1975?

A Would you repeat that?

Q Any significance to you -- does the date April 7, 1975, have any particular significance to you?

A Yes, it does.

Q What happened on that date?

A During that time on that date I turned myself in to the FBI.

Q Where was that?

A Washington, D.C.

Q Mr. Brown, this period of time you spent in jail between 1960 and 1964 was not the first time you were in prison, was it?

A No, it was not.

Q Had you been convicted for various offenses prior to that time?

A I had.

Q Approximately how many convictions did you have prior to 1960?

A Mr. Beller, I would say around seven, six.

Q When was the first conviction?

A When I was a juvenile in 1944.

Q How old were you then?

A 16.

Q What were the types of offenses for which you were convicted?

A Shoplifting, narcotics as a user and receiving stolen property and a few other things that I don't recall.

Q Of the convictions that you had before 1960, what was the longest time you spent in jail, the longest time you were sentenced for any of those cases?

A The one you spoke about in 1960.

Q That was how long?

A In Washington, D.C., for 44 to 45 months.

Q But the ones before that, those six or seven convictions, what was the longest period of time you were in jail on any of those?

A One year.

Q Mr. Brown, did you ever use narcotics?

A Yes, I have.

Q What kind of drugs have you used?

A Heroin and cocaine.

Q For how long, what periods of time did you use heroin and cocaine?

A I had a habit which I was addicted to drugs, to heroin, from 1946 up until 1954 or '55.

Q So, does that mean that you used drugs, heroin every day?

A Every day, right. And also I used cocaine during this period on occasions.

After I broke my habit I continued to use cocaine I would say every day or practically every week.

Q What about heroin after you broke your habit?

A On occasions when I felt depressed or I had a problem.

Q When you say on occasion, can you be a little more specific than that?

A I would say once a month. There would be times that it would lapse a little longer, for a two or three-month period I wouldn't use it and then I would go back and use it for a day or so and then discontinue it.

Q What were the circumstances leading up to your breaking your habit of using heroin daily?

A I went to serve a sentence of six months and when I came out I decided that I wanted to sort of change over. I mean I wanted to stop and test myself really in a manner of that nature.

Q Where did you serve that sentence?

A Rikers Island and Harts Island.

Q How long of a sentence was that?

A Six months.

Q When you were addicted to heroin, were you using that in your veins at that time?

A At that period I was.

Q After you were released from prison in 1975, did you ever use heroin in that fashion again?

A In 1957?

Q I'm sorry, when was it that you were released from Harts Island or Rikers Island?

A 1954.

Q After that time, did you continue to use heroin and when you used it in the same fashion?

A No, I did not.

Q How did you use heroin after that?

A I snorted it which meant I inhaled it up my nose.

Q How about cocaine, how do you use cocaine?

A The same fashion.

Q Mr. Brown, are you presently taking any drugs?

A No, I am not.

Q Do you have any drugs that have been prescribed for you?

A Yes, by a physician.

Q So when you said no, you are not, what were you referring to?

A Heroin and cocaine.

Q What kinds of drugs are you presently taking?

A Valium, Mellaril, it sounds like that.

Q Is it Mellaril, M-e-l-l-a-r-i-l?

A Correct. And also a sleeping pill.

Q That is by doctor's prescription, is that correct?

A That's correct.

Q What kind of a drug is Mellaril, do you know?

A It is a drug that is supposed to keep you calm.

Q For nerves?

A For your nerves.

Q Other than Valium, Mellaril and the sleeping tablet, are you taking any other drugs, any other medication?

A No, I haven't.

Q Now, Mr. Brown, after you were released from prison in 1964 -- by the way, which prison was that?

A Atlanta Penitentiary.

Q I want you to speak up. Please speak into the microphone and, even so, speak in a very loud and clear voice.

A I will try.

Q I didn't hear what you just said.

A I will try.

MR. BELLER: Thank you.

Q When you were released from Atlanta Penitentiary and moved to New York, did you have occasion to come into contact with a man named Filipino Tony?

A Yes, I did.

Q Had you known him before?

A Yes, I had.

Q Do you know Filipino Tony's true name?

A Yes, Antonio Phe[illegible]s.

Q Is that P-e-r-d-i-s to the best of your knowledge?

A Or d-e-s, I don't know the correct spelling.

Q What did Mr. Perdes do for a living at that time?

A He was a second story man.

Q What does that mean?

A He was a burglar, a good burglar.

Q Did you assist him in any way in his activities?

A Yes, I did.

Q Tell the ladies and gentlemen of the jury and the court what you did with him and when?

A I used to drive Tony to various residences which were consided estates and very wealthy.

Q What would happen when you would drive him there?

A I would park the car and wait on him and he would burg in the houses.

Q What would happen when he came back from the houses?

Q Mr. Brown, after you were released from Atlanta Penitentiary and came to New York, did there come a time when you again began purchasing heroin?

A Yes.

Q From whom did you make purchases of heroin?

A From Mr. B, Benny.

Q Do you know his true name?

A Yes, I do.

Q What is it?

A Sebastian Intersimone.

Q When had you met Sebastian Intersimone?

A I first met Benny in 1959.

Q Mr. Brown, will you look around the courtroom, please, and tell us if you see the man you are referring to in court today?

A Yes, I do.

Q Would you point him out, please?

A He is the gentleman that is sitting on the far end with the green shirt on with the eyeglasses.

MR. BELLER: Your Honor, may the record reflect that the witness has identified the defendant Sebastian Intersimone?

THE COURT: It may.

Q Mr. Brown, would you tell us, please, the circumstances of your first meeting with the defendant Sebastian Intersimone?

A Yes. During these years a friend --

Q Let me interrupt. When was it again you first met him?

A In 1959.

Q Go ahead.

A During this period I had a friend who had a grocery store in the neighborhood of 123rd and 124th. His name was Jimmy Richardson. I used to frequent the store every day. There came a time when Jimmy approached me as a matter of what he knew that I was doing at that time and he approached me--

Q Which was what?

A Dealing in heroin. He approached me and asked me was I interested in meeting a new connection.

At that time I told him I was, but I would have to consult my partner.

Q Who was your partner?

MR. KEEGAN: I would like to have a continuing objection to the testimony that antedates the dates in the indictment.

THE COURT: All right. At this limited point you may for a limited period of time.

All right, go ahead.

MR. BELLER: Could we have just the last sentence read back?

THE COURT: You asked him what the name of his partner was.

MR. BELLER: Thank you, your Honor.

Q What was the name of your partner?

A Jimmy Mojo -- they referred to him as Mojo.

Q Is that m-o-j-o?

A M-o-j-o, yes.

Q Do you know his true name?

A Jimmy Richardson.

Q Do you know Mojo's true name?

A Glennard Spearman.

Q G-l-e-n-n-a-r-d S-p-e-a-r-m-a-n?

A I imagine, Mr. Beller.

Q So, after you told Jimmy Richardson that you would have to speak to Glennard Spearman or Mojo, what happened?

A I met with Mojo and told him what Jimmy had said and we agreed at that time. The next day we went over to the grocery store that Jimmy owned and we told Jimmy that we both were interested.

He told us that he would make arrangements and that he would get back to us, meaning that when he was ready he would get back to us.

Several days later, I don't know, maybe two or three, I saw Jimmy and he told me that he was ready. I immediately got in contact with Mojo and we both met up at Jimmy's store--

Q Where was that again?

A At Jimmy's store.

Q Right, where was the store located?

A Between 123rd and 124th on 7th Avenue.

Q Okay, go ahead.

A He told us--

THE COURT: Mr. Brown, this is New York City you are talking about?

THE WITNESS: This is New York City.

THE COURT: All right.

A (Continuing) During this time Jimmy said that he would close the store and we were to follow him. He would go in his car and we were to follow him in our car.

Q Did you do that?

A Yes, we did.

Q Where did you go?

A We went to either 54th or 55th on the East Side.

Q What was located at that address?

A At that time there was a bar. The name of the bar was Pepe's Bar and when we got there we parked the car. We went inside Pepe's bar and we sat at the bar and had a dri

A fellow came in and he came over to where we were and Jimmy introduced, I want you to meet Mr. B, Benny.

At this time Mr. B told the bartender or the owner that he wanted to use the back of the store, meaning the place where they make orders or something to that effect.

During that time Benny said to us, you come well recommended so that is good enough for me.

At this time we discussed heroin. Also we discussed price of heroin.

Q In what way did you discuss those things?

A Benny asked us had Jimmy told us what we were here for. We said, yes, we understand.

He said, well, I am in a position to get you what you want and I will stand behind it a hundred percent.

At that time he quoted a price and we agreed upon it.

Q Did you agree on a quantity as well?

A Well, we didn't agree-- on quantity?

Q Yes, sir.

A Not really. We didn't agree on quantity, no, because, you know, we didn't know what it would be. He said

I would stand by it 100 percent and that was good enough.

Q I don't mean the quality. I mean quantity, how much?

A I'm sorry. Quantity?

Q Yes.

A Yes, we did. I'm sorry, I misunderstood you.

Q All right, it was probably my fault.

What did you agree on, what amounts?

A 1 kilo.

Q Now, what else happened, if anything, at that time?

A After each party agreed we went outside, we had had a few drinks, and he told us that when he was ready Jimmy would get in touch.

Q Did there come a time when Jimmy did get in touch with you?

A Yes, it was the next day or maybe several days, Mr. Beller. It was within 72 hours I would say, Jimmy came to us or rather he called me and told me to come uptown. I called Mojo and we both met him and Jimmy said that everything was ready.

Then again Jimmy said he wanted us to follow him. He would drive his car and we would drive ours.

Q Did you do that?

A Yes, we did.

Q Who were you with?

A I was with Mojo and he was by himself.

Q Where did you drive to?

A To the vicinity of Avenue A and Avenue B at 10th or 11th Street.

Q Avenues A and B, that is on the east side?

A The lower east side, right.

Q What happened when you got there?

A When we got there Jimmy parked and I parked right behind and we gave him the money in a paper bag, a brown paper bag.

Q You gave who the money?

A Jimmy Richardson. He said he would be right there.

I would say a half an hour, maybe 40 minutes later, Jimmy came back to the car. At this time Mr. B was with him.

Q Mr. B is the defendant Sebastian Intersimone?

A Correct.

Jimmy drove off and Mr. B got in the car with Jimmy and myself. He said, "Let's move. I don't want to stand still. It's a bad neighborhood."

We drove around maybe two or three times 12th Street, 9th Street and 10th and during this time he said that in the future we would use the same procedure. If we wanted something to get in touch with Jimmy.

After we left Mojo -- I'm sorry, after we left Benny, Mojo and I went to his apartment.

Q Let's back up a little bit.

Did you get anything from Mr. Intersimone at the time?

A Yes, the kilogram we had talked about we received from him.

Q The kilogram of what?

A One kilogram of heroin.

Q What did it look like when you got it? When you say you got a kilogram of heroin, what exactly is it that you got from Mr. Intersimone?

A What did it look like?

Q Yes, sir.

A It was in a brown paper bag when we received it.

Q What does that mean, a brown paper bag?

A A grocery bag.

Q How big was this package?

A It wasn't too large.

Q "Too large, too small" is not very helpful. Can you describe, using your hands or by inches or feet or whatever it was, approximately what did this package look like, the dimensions of the package?

A Like a grocery bag, Mr. Beller, and I would say a medium sized grocery bag.

Q Okay. Did you give him any money at this time?

A Yes.

Q Do you recall how much?

A We gave the money to Jimmy, Mr. Beller, and Jimmy gave it to him. It was around $15 or $16,000.

Q What denomination bills did you give to Jimmy for the defendant Intersimone?

MR. KEEGAN: On behalf of the defendant Intersimone objection to the form of the question, your Honor.

THE COURT: Yes, sustained as to form.

What denomination bills did you give him.

Q What denomination bills did you give?

A Large bills -- I mean small bills, 20's, 10's, 5's and singles, meaning $1 bills.

Q Did there come a time when you had a conversation with Mr. B about these denomination bills?

A Yes, there was a conversation.

Q When was that?

A On our second meet which we went to score again from Mr. B to get heroin.

He told us that -- he told me, rather, he says, "Jackie, please, I don't like carrying two shopping bags full of money around. Please, would you do me a favor. Will you please have the bills in larger bills and also in, you know, in unison, correct, because it's hard to carry shopping bags full of dollars, 5's and 10's and 20's" and he wanted, briefly -- he was saying that we should bring him larger bills in the future.

MR. KEEGAN: Mr. Keegan on behalf of the defendant Intersimone.

Your Honor, could we have a time, place and date for this conversation?

THE COURT: Yes.

Q First let me just ask you:

What was meant by larger bills?

MR. KEEGAN: Objection, your Honor.

THE COURT: Sustained.

What was said about larger bills.

Q Did you have a conversation about what larger bills meant?

A Yes.

Q What did larger bills mean according to this conversation?

A Hundreds, fifties.

Q Now, the secone meeting that you just described, approximately when did that take place?

A Around -- it was two to three weeks after the first meet.

Q Where did it take place?

A In the same area.

Q That is the lower east side of New York?

THE COURT: What year are we talking about now?

THE WITNESS: 1959.

MR. ANOLIK: Your Honor, we would ask for a charge at this time --

MR. BELLER: Objection to this discussion in front of the jury, your Honor.

THE COURT: Do you want to come up to the side bar?

Is this something that has to be done at this moment?

MR. ANOLIK: I think it should, your Honor.

THE COURT: All right.

3-H and 3-J in evidence.

MRS. ROSNER: As against whom, your Honor?

THE COURT: I don't know.

MR. BELLER: For the same reasons as the proof is being offered.

THE COURT: That is offered against Intersimone alone at this point. The purpose is identifying people about whom this witness has spoken in connection with the five transactions.

MR. BELLER: Subject to the views expressed at the side bar.

MR. KEEGAN: Without seeing them I object. There is no relevance to this case and this trial.

THE COURT: I will overrule that objection.

Any other objection?

Q Mr. Brown --

THE COURT: They will be received.

(Government's Exhibits 3-H and 3-J for identification were received in evidence.)

MR. BELLER: I will proceed but I would like him to see the photographs at some time.

Q Mr. Brown, on this first occasion you received one kilo of heroin, is that correct?

A Which occasion?

Q The first occasion when you met the defendant Intersimone?

A That is right.

Q After receiving the heroin what did you do?

A Mojo and myself went to his apartment.

Q Where were you living at this time in 1959 and 1960?

A 200 West 90th Street in 1959 and 1960.

Q Where was Mojo's apartment if you recall?

A On 85th Street between Columbus and Amsterdam.

Q Columbus and Amsterdam Avenues?

A That is correct.

Q On the west side of New York City?

A Correct.

Q What happened when you returned to Mojo's apartment?

A Well, we went into his apartment and Mojo opened the package. In the package was the heroin.

He took out a magazine, something equivalent to Life Magazine. He injected a hole with a needle through the package and by so doing, some of the heroin was placed on the magazine. He went to his cabinet and got some cut.

Q What does that mean?

A Something you dilute coke with.

Q What?

A You cut it, dilute it, mix it, mix it up. You mix it.

Q Did you say dilute?

A Something you mix heroin and cocaine with.

He took the cut out of the cabinet. He mixed -- I think it was milk sugar -- with the cocaine and showed me that he was trying to show me that this is the way you cut heroin.

Q What are some examples of cut? Have you used cut in your period of engaging in narcotics?

A Yes, I have.

Q What is an example of a cut?

A Milk sugar.

Q What is milk sugar?

A Something that you give babies, for a substitute for milk. Mannite is a laxative, a mild laxative.

Q What color is milk sugar?

A Some is white, some is off color white.

Q What about mannite?

A It is white.

Q What kind of substance is it, is it solid, liquid?

A No, it is a powder. Milk sugar is a powder form and you put mannite through a strainer, it comes a powder form. It is in a block.

Q What color is heroin?

A It varies. It comes in different colors: grayish, white, pure white, and brown, dark brown.

Q What about cocaine?

A It also varies in colors.

Q From what to what?

A Sometimes it is more white than others. Sometimes it has an off color yellow.

Q Now, I think you told us that you had gotten in the appartment, Mojo had a magazine and went to the cabinet and took out some cut.

A He also got a pack of playing cards and took two cards and began to mix on the magazine, the milk sugar with the heroin.

He did this back and forth for five or ten times and then he put it through a sifter and sifted it for about five times.

Q What did he do with the playing cards exactly?

A He did it in a moving fashion. He would move it, mix it, turn it over, flatten it and that is what he considered mixing it in.

Q What happened next?

A At that time I was wearing a face mask made out of a towel that was wet.

Q Why did you do that?

A In cutting heroin if you don't use this towel the fumes of the heroin, you can become addicted to it. It will go into your pores over a period of time and cause you to vomit and as a result of Mo~~jo~~ ~~not~~ having a towel on his face and nose area, he got sick and had to go to the bathroom and vomited.

Q After you finished cutting the heroin what happened?

A Mojo told him that he could get rid of it faster than I could because he had customers in Pittsburgh adn wanted me to give him the whole kilo that we had obtained from Benny, turn it over because he said it was very good.

Q Did you do that?

A Yes, I did. Not all of it. I kept some for my customers.

Q Now, you earlier referred to a second meeting with the defendant Sebastian Intersimone also. Will you tell us about that?

A It came about in the same fashion as the first.

I was getting in touch with Jimmy to call him often and when I was ready to reach him the same fashion we used, the same arrangements were made and the deal went down the same way that the first one went down.

MR. KEEGAN: I object to this. All he is doing is giving conclusions about a so-called deal went down.

THE COURT: Strike it out.

Ladies and gentlemen, you heard me in the past and I am sure you will hear me in the future saying something is stricken from the record.

Now, I realize that we are all human beings, when you hear something you have heard it. But it is a requirement that when something is stricken from the record that you are to put it from your mind completely as if it had never been spoken and you never heard it and you give it no consideration in any way at any time during the case of in your deliberations.

All right, go ahead, sir.

Q Mr. Brown, did there come a time when you again met with the defendant Intersimone for the purpose of purchasing heroin?

A Yes, there did.

Q How much after the first meeting?

A From two or three weeks.

Q Where did you meet him?

A At Avenue A or B, at 10th or 11th Avenue.

Q 10th or 11th Avenue?

A 10th or 11th Street, I am sorry.

Q Where was the defendant Intersimone living at that time, if you know?

A He was living on 10th Street.

Q What avenue?

A Avenue B.

Q How much did you purchase at this time?

MR. KEEGAN: Objection, no foundation.

THE COURT: Sustained.

Q Did you meet with the defendant Intersimone on the second occasion for the purpose of purchasing heroin?

A Yes, I did.

MR. KEEGAN: Objection, leading.

MR. BELLER: I already asked the question and he answered that he did.

THE COURT: Let's just ask him if he met and what did they say to each other and go forward on that basis.

Q The period of 1959 and 1960 did you meet with the defendant Intersimone on several occasions?

A Yes, I did.

Q On any of those occasions did you purchase drugs from him?

A Yes, I did.

Q Can you focus on this occasion then? Where did you meet him on that occasion?

MR. KEEGAN: Which occasion?

THE COURT: The second time now, is that right?

MR. BELLER: Yes, your Honor. The second time he purchased drugs from him.

THE COURT: What happened on that occasion?

Q One moment, please.

Where did you meet with him on this occasion?

A 10th or 11th Street at Avenue B.

Q What happened at that time?

A I bought two kilos of heroin from him at that time.

Q Did you pay him?

A Yes, I did.

Q Other than these two occasions were there any other meetings that you had with the defendant Intersimone?

A Not for the purpose of heroin but we met on occasions.

Q Will you describe the relationship that you had with him at this time?

A I considered myself very close to Benny at this time.

Q Were you friends?

A I would think so.

Q What happened on these occasions when you met with him and didn't purchase drugs?

A On occasions we would be at a bar and we would drink and he would ask me how I was doing, Jackie, and watch myself. If you have a problem call him.

Q Mr. Brown, what was the quality of the heroin that you purchased from Mr. B, the defendant Intersimone?

MR. KEEGAN: Objection, your Honor.

THE COURT: Overruled.

A It was of the best quality, considered 100 percent.

MR. KEEGAN: I object to the answer as his not being qualified to give that, no foundation laid to show that he could give such an answer.

THE COURT: Overruled.

Q Mr. Brown, I am showing you Government's ars

Q What was her last name?

A Jordan but her sure name was Ricevuto.

Q When you say her sure name what do you mean by that?

A That was her name given to her.

Q Did she use the name Jordan?

A She did.

Q Did there come a time when your wife Arlene went to jail?

A Yes, she did.

Q What was that about?

A Shoplifting.

Q Did you develop a relationship with Jan?

A Yes, I did.

Q Did you begin to live with her?

A Yes.

Q How long a period of time did you live with Jan?

A From 1959 until I went to Atlanta and after my release up until 1973.

Q Where did Arlene live?

A Arlene lived in Washington, D.C.

Q When were you released from Atlanta?

A In July of 1964.

ars

Q I believe you testified that you had occasion to meet with Mr. B after your release from prison?

A Yes, I did.

Q What happened at that time?

A When I was released from Atlanta I came to New York. Jan had moved to 14th Street which was in the vicinity of Benny and I had Benny's phone number before I went away and I called him and I went to his house the next day and we were drinking because he was glad to see me come hom.

At that time he gave me $50 and said he was doing bad and wished he could give me more but to hang in there and just be patient.

Q Did you see him thereafter?

A Yes. I saw Benny quite often.

Q Did there come a time when you had a conversation with him about heroin?

A Yes, I did.

Q Did you have a conversation with him about purchasing heroin?

A Yes, I did.

Q That is, your purchasing heroin?

A Yes.

Q When was that?

MR. KEEGAN: I object to this as prior to the indictment, the conspiracy charged in the indictment.

THE COURT: Yes, overruled on the same basis.

A That was, Counselor, the latter part of 1964 or 1965.

Q Where did you meet with him?

A I met with him at my apartment on 14th Street.

Q Tell us about the conversation?

A Benny told me that he was in a position to help me. He had scored again and that for me to get myself ready for what was going to happen and any money that I had, try to get as much as I possibly could, up front, you know. I told him I would.

He left the apartment. Before he left he said that he would be back in touch with me.

At that time he also told me that we should make arrangements now as to where we would meet.

Q Did you do that?

A Yes, we did.

Q What was the arrangement?

A We both agreed on a neighborhood that we considered a nice, quiet neighborhood. That was around Beth Israel Hospital between 17 and 18 on First Avenue.

It is adjacent to a park, rather the back part of the hospital, is adjacent to a park.

Q Do you know the name of the park?

A No, I know the name of the hospital. My son was born there.

Q What is the name of the hospital?

A Beth Israel.

Q Which son was born there?

A My son, first son from Jan, John Tod.

Q When was he born?

A November 23rd, 1966.

Q Now, after you made these arrangements to meet with Mr. B, what happened?

A The next day -- the next day he called and he prearranged an hour for us to meet and I told him fine. We knew where we were going to meet so we didn't discuss that.

But I overslept. As a result of me oversleeping he called Jan and wanted to know where I was. She told I was sleeping. He said wake me up.

She woke me up and he said, "What are you doing to me, Jackie? Do you know what time it is?"

I said, "No, I don't."

He said, "Put your clothes on and meet me. What are you doing to me?"

So I hung the phone up and asked Jan what time it was. It was three hours or four hours later than what I was supposed to meet him.

I put on my clothes and walked to the area that we had arranged to meet. Upon arriving there I saw Jimmy and -- I am sorry, I saw Benny -- and at that time I got into his car and he gave me hell but he wasn't mad but he gave me hell.

We drove around several times and then when we got to First Avenue, the next block from Beth Israel, there was a car parked in front of where we parked.

At this time he told me to get out of the car -- incidentally I carried the money also which I had in his car.

He told me that I was to get into the car in front and the kid would tell me what to do.

Q What kid?

A The kid that was with Benny. I don't know his name, I couldn't identify him if I saw him. I don't know. I can't remember his name or who it was.

Q Go on?

A I got into the car with the kid and we drove around as Benny and I did and when we approached 14th Street and First Avenue he told me, "There is your package right there."

It was in a brown paper bag right next to me.

I got out at 14th and First Avenue and as I was crossing the street Benny gave me a high sign.

Q What does that mean?

A You know, see you later or good luck or, you know.

Q Okay, what happened next?

A I went to the apartment.

Q Did you have occasion to examine the contents of the package?

A I did that immediately.

Q What was in it?

A It was two -- it was one kilo of heroin, maybe two -- it was one kilo of heroin. It was very good.

Q Mr. Brown, in this period of time, referring now to 1965 and also let me direct your attention to 1966, did you have other connections or sources for heroin?

A In 1966?

Q 1965 and 1966, yes?

A Yes, I did.

Q Who were they?

MRS. ROSNER: May we know once again who this

THE WITNESS: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. BELLER:

Q Mr. Brown, on Friday you testified concerning a transaction in 1965 with the defendant Sebastian Intersimone. Do you recall that?

A Yes, I do.

Q Thereafter did you have occasion to see Sebastian Intersimone in New York?

A During that period?

Q Yes, after 1965, in the years after 1965.

A Yes, I did.

Q With what frequency did you see him?

A On an average of once a week.

Q What kind of relationship did you have with the defendant Sebastian Intersimone?

MR. KEEGAN: Objection, your Honor.

THE COURT: Sustained.

Q Where would you see the defendant Sebastian Intersimone?

A Either at his apartment or in several bars.

Q When you saw him, how long a period of time would you spend with him?

A 45 minutes or an hour.

Q Sometimes more, sometimes less?

A Sometimes less, but no more than an hour.

Q Did you ever discuss your activities or your associates about whom you have already testified with the defendant Sebastian Intersimone on any of these occasions?

A Yes,on several of those occasions.

Q Do you recall any particular conversations involving individuals about whom you have already testified?

A Yes, I did.

Q Would you tell the jury and court, please, what you recall about those conversations?

MR. ANOLIK: Can we fix the time, your Honor?

THE COURT: Yes. Can you fix the time?

Q Do you recall any particular time when you had any of these conversations?

A In 1965, after I had done business with him, after we had begun doing business as a result of my coming out of the penitentiary. I would meet him after that incident and he would call me consistently to see how I was doing and as far as dates are concerned, I can't recall the dates. It would be on many different occasions that he would just call and want to see me and talk with me.

Q Perhaps we can get it a different way: Tell us first about whom you had conversations?

MS. ROSNER: Your Honor, I object. I have a hearsay objection.

THE COURT: This is admissible I take it against Mr. Intersimone.

MR. BELLER: It may not be since it is presetn 1968, your Honor.

THE COURT: I think then the time becomes important, from that point of view.

MR. BELLER: I will try my best, your Honor.

Q About whom did you have conversations with of the defendant Intersimone?

MS. ROSNER: Objection. I thought he was going to fix the time.

MR. BELLER: I will do that as soon as he tells us about whom.

MS. ROSNER: I object.

THE COURT: I will go ahead on the basis that at this point it is only admissible against Mr. Intersimone and if the date is established that makes it admissible against anybody else, we will cross that bridge when we come to it.

Q About whom did you have conversations with the defendant Intersimone?

A About the people that I was doing business with at this time.

MS. ROSNER: Objection and move to strike, conclusory.

THE COURT: No, overruled. Go ahead.

Q I gather they had names, Mr. Brown.

A Yes.

Q Would you tell us the names of these people?

A It was Patty Pontiac, Jinx and Frank Boden.

Q Can you recall when it was that you first had conversations with the defendant Intersimone about Patty Pontiac and Jinx?

MR. KEEGAN: Objection. May we have a conversation at the side bar?

A No.

THE COURT: Overruled. Go ahead.

A Mr. Beller, I would say it was around the time that I started doing business with Patty Pontiac.

Q Which was when?

A 1965.

Q What was the conversation you had with the defendant Intersimone?

A I asked him if he did know Patty or Jinx and I told him they were from Pleasant Avenue.

Q Where is Pleasant Avenue?

A That is between East River Driver and First Avenue.

Q Approximately what street?

A 116th and 117th.

Q Would you continue to tell us about these conversations?

A My reason of asking--

MR. MITCHELL: Objection.

THE COURT: Sustained. What did you say to each other?

Q Tell us what he said and what you said.

A After I told him or asked him about these two people, he told me that I shouldn't do business with anybody from Pleasant Avenue because people of that neighborhood, they would cross me easy.

Q Let me direct your attention to the end of 1969, after you moved to 180 West End Avenue. Did there come a time when you had a conversation with the defendant Sebastian Intersimeone concerning narcotics?

A In 1969?

Q Yes, sir.

A Yes, I did.

Q Would you tell the jury and the court, please, what happened at that time?

A I called Benny at his apartment and I told him that it was urgent that I see him and he told me that if he wanted to see me, he would make arrangements that day, and he fixed the time of day, it was in the evening, and he told me to meet him at the usual place where we met.

Q Which was where?

A In the vicinity of Beth Israel Hospital, on First Avenue between 18th and 19th Street.

At this time, when I met him, I told him that I was out of heroin and that if he could reach out for a kilo for me I would appreciate it. He said he would try and he would get in touch with me if he scored, connected. Several days later he called me and told me to come down to his apartment--

Q Where was that, again?

A On 10th STreet near Avenue A and Avenue B. I whistled, as I normally do, and he came to the window and threw the keys down. I opened the door. When I got to the second flight he stopped me and he had the package and he said he was talking to some friends of his upstairs and he didn't want me to see them and them to see me. At that time he gave me the package of heroin, or alleged heroin, and I gave him the money and I left. I went back to my apartment and I put the package that he gave me in my stash.

Three days later someone wanted some heroin, so I went to my stash--

Q When you say someone, what does that mean, someone?

A One of my customers.

Go ahead.

A I got the package out of my stash. When I opened it it was Epsom Salts. I immediately called Benny and I told him that I wanted to see him with regards to the deal that we had before. I met him in the same vicinity as I normally do and I got out of my car and we got in his car -- or rather we sat in the park adjacent to Beth Israel. During this time he asked me what was wrong and I told him "Benny, the package you gave me was a lemon." He asked me what I meant and I said "It was Epsom Salts." He said a few words and he was rather mad at whoever gave him the package and he said "Don't worry, Jackie, I will make arrangements to make it up to you."

Q Did there come a time when you learned the defendant Sebastian Intersimone had moved from New York?

A Yes.

Q Did you learn where he moved to?

A He moved in the Catskills, to a town called Accord, New York.

Q Do you know how to spell that?

A A-c-c-o-r-d.

Q Have you ever been up to Accord, New York?

A Yes.

Q How far is it from New York City?

A I would say it would take you 45 minutes by car.

Q Do you recall when it was that you lerned that Sebastian Intersimone had moved to Accord, New York?

A Mr. Beller, it was in 1970.

Q What happened to the apartment, if you know, on 10th Street?

A As far as I know, he kept it.

Q Let me focus your attention, for the moment, on the fall of 1971. Did you have occasion to have a telephone conversation with the defendant Sebastian Intersimone concerning a heroin transaction?

A Yes, I did.

Q Will you tell the court and jury, please, what happened, what did he say, what did you say?

A Benny called me and he told me that he wanted to see me --

Q Where were you and where was he?

A He was in the Catskills, in Accord, and I was at 180 West End Avenue. He told me to stick around the house and that either that day or the next day he would be in to see me. The next day he came. He was carrying a briefcase and also he had a brown paper bag. He told me that he had scored for some heroin and that he was giving me first choice. At that time he gave me 4 kilos of heroin. He asked me what kind of money I had on hand and I don't recall how much I gave him, but I gave him whatever I had. He told me to try to sort of speed it up and turn it over as fast as I could because he needed the money.

Q Did you make arrangements for payment of the balance that you owed him?

A Yes, I did.

Q What was that?

A On several occasions I went up in the Catskills, or up to the New York Thruway, and I got off at Exit 17 or 18, and he would be there waiting on me and we would either drive to a gas station and on one or two occasions we went to a diner.

Q What would happen on those occasions?

A I would give him the money owed him for the package.

Q How much did you pay for each kilo of heroin?

A $20,000.

Q Did you have to inspect the heroin?

A Yes, I did.

Q What was the quality of the heroin you received on this occasion in the fall of 1971 from Sebastian Intersimone?

A It was like the first one that I received from him, it was very good.

Q What did you do with the heroin you received from Sebastian Intersimone in the fall of 1971?

A I had some heroin on hand when I made this transaction with Benny and it was--

Q Where did that come from?

A That came fromy ~~Benny,~~ Beansie and the heroin was weak. So I took the heroin I got from Benny and I mixed it together and also I put some and cut it and after I did this I sold it to my customers.

Q Are any of those customers in court today?

A Yes.

Q Would you point them out, please?

A Directly in front of me is Sidney Foster, Chinch, sitting next to Chinch is Bootnose.

Q Do you know his true name?

A Sampson. His first name I can't recall.

Q Sampson is the first or last name?

A Last name.

Q Do you know his first name?

A I know it but I can't recall it now.

The young lady sitting in the first row, on my right, Toni, she received some.

Q When you say the first row on your right--

A In the spectators, behind the screen, with the dark glasses on. The party next to her, Hightower, then on Hightower's left, Louis --

Q Do you know Toni's true name?

A No.

Q Do you know Mr. Hightower's first or last name?

A Last name.

Q Do you know his first name?

A Yes, William.

Q And Lois, is that her first or last name?

A First name.

Q Do you know her last name?

A Well, she uses the last name of Sampson, which was Bootnose's last name.

Q Any relationship between them, as far as you know?

A They were man and wife.

The fellow in the pink, or lavendar, shirt, the second from the end on the same row, Tommy Davis. He receives some of it.

MR. BELLER: Your Honor, may the record reflect the witness has identified the defendants Sidney Foster, Joseph Sampson, Mary Dunmore, William Hightower, Louis Sampson and Tommy Davis.

MS. SOLLEDER: Objection, your Honor. He identified a woman by the name of Toni --

THE COURT: The record may reflect he identified a woman known as Tony who happens to be a person seated in that proper place and is here identified as Mary Dunmore.

MR. SOLLEDER: Conceded, your Honor.

THE COURT: Very good.

Q Mr. Brown, in the fall of 1971 where did Sidney Foster live?

A Washington, D.C.

Q Where did the man you referred to as Bootnose live?

A He also lived in Washington, D.C.

Q Where did the woman you have referred to as Toni live?

A She lived in New York City.

Q Where did William Hightower live?

A Washington, D.C.

Q Where did Lois Sampson lived?

A She lived in Washington, D.C.

Q Where did Tommy Davis live?

A New York City.

Q Do you know a man named Solon Glaze?

A We referred to him as Solo Glaze.

Q Do you know him?

A Yes.

Q When did you meet him?

A In 1959.

Q Where did you meet him?

A 200 West 90th Street, when I was living there.

Q Where was he living?

A He had several apartments. He lived on 106th between Manhattan and Columbus, and he had an apartment on Broadway at 108th or 109th, and later on he had an apartment on Broadway between 67th and 69th.

Q When did he have that apartment?

A In 1972 -- 1971, I'm sorry.

Q I am referring to the period in the 1960s when you met Solo Glaze. Where was he living at that time?

A From the original time I met him?

Q Yes.

A He was living in the same house, which was a renting house, that I lived in at 26 East 126th Street.

Q Did Solo Glaze have occasion to purchase drugs from you prior to 1960?

MR. ANOLIK: I object, your Honor, as being so

Q How frequently did that occur?

A The same as it did when Bubba came down, every month or once a month or every six weeks.

Q Did there come a time when Frank Moten and the defendant Sebastian Intersimone met in your presence?

A Yes.

Q When was that, do you recall?

A In 1971, the latter part.

Q What happened?

A Benny was in town as a result of coming down from Accord to get some money from me that I owed him from the last shipment that I got, and while we were there Frank rang the bell and came up. I introduced Frank, I said, "Frank, this is Benny that I told you about," and I said, "Benny, this is Frank that I have spoke to you about." They both met and they had a conversation and then Benny said, told Frank, "You know, I like this kid and I wouldn't want anything to happen to him," in other words, he said he had his arms aroun me --

MR. KEEGAN: Objection to the "in other words," your Honor.

THE COURT: Overruled.

A At that time Frank said, "Well, I like him also," and Benny said, "I'm glad you do."

T5 pm

ars

Q Mr. Brown, I direct your attention to March or April of 1972.

Did there come a time when you, the defendant Frank Moten and the defendant Sebastian Intersimone entered into a financial transaction?

A In what month?

Q In March or April, 1972?

A Yes.

MR. KEEGAN: May we have an offer at the side bar as to the relevance of this proof?

THE COURT: No, overruled.

Q Mr. Brown, will you tell the jury the circumstances leading up to this incident?

A Benny had told me previously, before this transaction, that he wanted to have some money legalized, meaning that he wanted to take some bad money and make it good.

MR. KEEGAN: Objection as to the characterization.

THE COURT: Strike out the characterization.

A He wanted to know if I could get some money exchanged for him. I told him that I would try and I would reach out.

There came a time in in March when I told Frank that --

Q Let me interrupt you a moment. When did you rs2

have this initial conversation with the defendant Intersimone?

A Some time during 1971, during the time that he would come down from the country or I would go up to his country to pay him for the drugs that I received from him.

Q What did you do after that conversation?

A What did I do?

Q Yes. What happened after you had the initial conversation with Mr. Intersimone? What happened next?

A He asked me did I know anybody that could legalize some money for him.

Q You already told us about that?

A Right.

Q After that conversation what happened?

A Frank told me that he could legalize for him.

Q Did you talk to him?

A Yes, I talked to Frank and told him what Benny wanted and he said that his friend in Boston could do it for him.

I called Benny up in the country and told him that I could arrange to transact the business that he wanted me to.

At that time he said to try to do as much as you can.

I said, "I am limited, Benny, I can only transfer $20,000."

Q How did you know that?

A Because Frank told me that his friend wouldn't do any more than this and that he wanted to keep some space for himself if he needed to do it.

Q So what happened?

A Benny told me he couldn't come down but whatever I had to spend, which was $20,000 that Frank had mentioned. To give it up but don't give it up until I am certain that the money has been exchanged and this deal went down. In other words, don't give up any money, Jack, he said until you are sure it is on the up and up.

Frank and I flew to Boston. We went to a bar that he used to own, a building and at this time a friend of his in Boston owned this building and this night club.

We went there and Frank and the man that owned the place, his name was Peter Fiore or something to that effect.

Q What?

A Peter Fiore or something. He and Peter went to the back room and discussed whatever business they had.

Then Frank came out and told me to come in the rs4

office. I had met Peter before at Frank's house, this is an introduction, and Frank told him what I wanted to do and he said he would be glad to do it.

So he took the $20,000, went out. He had a --

Q Who went out?

A Peter did.

Then he went out and when he came back he had a check in the amount, a certified check, in the amount of $20,000 made out to Sebastian Intersimone.

Q What happened next?

A I got, kept the check and eventually I gave it back to Benny and he gave me the money.

Q Now, what happened after you left Peter's office?

A We went to an attotney that I had engaged in Boston and Frank and I, and we met Bubba Davis there and it was rather late.

Frank wanted to get back to New York so we stayed there about a half hour and both of us caught a plane and cameback to New York.

Q Mr. Brown, do know a man named Willie Womack?

A Yes, I do.

Q When did you meet Willie Womack?

A I met Willie Womack in 1958 or 1959.

Q How long did you stay at the home of Mrs. Sanford?

A I stayed there from January 7 to around some time in the latter part of March.

Q While you were there, Mr. Brown, did you have a telephone conversation with the defendant Sebastian Intersimone?

A Yes, I did.

Q Tell us about that conversation, please?

A I called Benny up and Benny said, "Hey, I'm glad to hear from you. Where have you been?"

He said, "If I had gotten in contact with you earlier I would have had good news for you. I had something decent for you."

Q What did that mean?

MR. KEEGAN: Objection, your Honor.

THE COURT: Yes, sustained.

Q Mr. Brown, did there come a time when you left Mrs. Sanford's home?

A There did.

Q Where did you go?

A I went back and forth from New York to Washington, catch a train, catch a plane, and go back until finally in Washington I had no place else to go so

BY MR. KEEGAN:

Q Mr. Brown, my name is David Keegan and I represent Mr. Intersimone.

You have testified to a transaction which you say Mr. Intersimone sold you 4 kilograms of heroin in the fall of 1971, is that correct?

A That's correct.

Q Did you ever tell anyone it might have been the fall of 1970 or '71?

A I don't recall, sir.

Q I will show you what has been marked as Government's Exhibit 3505-0-5 for identification and I will direct your attention to page 12 thereof, to a section I have underlined. Will you read that to yourself, please.

A Just the underlined --

Q Just the underlined section, yes. Well, you can read around it if you want, if it will help. Just read it to yourself. There is no question pending.

(Pause)

Q Have you read it?

A Yes, I have.

Q Does that refresh your recollection that you had once said the transaction which you claim involved 4 kilograms of heroin occurred in either 1970 or 1971?

A It does.

Q And you did so state?

A According to that, I did.

Q Well, this is a transcript of a taped interview given on May 4, 1975, is it not?

A Yes, it is.

Q Having read that, could you now state whether it was 1970 or 1971 that the transaction in question took place?

A Truthfully, I can't. I still don't remember whether it was '70 or '71.

Q This transaction you testified was preceded by a telephone call from Mr. Intersimone in Accord, New York, to your apartment at 180 West End Avenue, is that correct?

A That's correct.

MR. KEEGAN: May I have this marked as Defendant Intersimone's Exhibit, I guess, A for identification, please?

THE COURT: We will mark it Exhibit D.

(Defendant Intersimone's Exhibit D marked for identification.)

Q Mr. Brown, I show you what has been marked Intersimone's Exhibit D for identification and I ask you to look at that and read it to yourself, again without saying anything.

THE COURT: Counsel, what I think we will do here is we will mark Defendant's Exhibits with sequential letters regardless of who the defendant is who proffers it. That will make it simpler all around.

Q You do know Mr. Intersimone's telephone number, do you not?

A Yes, I do.

Q Do you recognize this as being a portion of a telephone bill for Mr. Intersimone?

A Yes, I do.

MR. BELLER: Your Honor, I object to discussing the contents of any exhibit until I have had a chance to object to its admission.

MR. KEEGAN: I have not offered it yet.

MR. BELLER: I object to the discussion of the contents.

MR. KEEGAN: Your Honor, I am trying to identify it.

THE COURT: Overruled.

Q Do you recognize the telephone call --

MR. BELLER: Your Honor, I object. Could we have a side bar?

MR. KEEGAN: There is no side bar necessary.

I am trying to identify the exhibit prior to making an offer.

MR. BELLER: I would ask for a side bar, your Honor, very briefly.

THE COURT: Let me see the exhibit, please.

(Pause)

THE COURT: Come to the side bar, please.

(At the side bar)

THE COURT: What is your next question, Mr. Keegan?

MR. KEEGAN: Whether he recognizes the telephone number called as being his phone number at 180 West End Avenue.

THE COURT: The problem I have with that, and I will anticipate you, Mr. Beller, is we have here an exhibit that is obviously a blocked out exhibit. I am not saying it is a fabricated exhibit, it is a blocked out exhibit

It seems to me the sole issue which could be established by this, and he doesn't know the telephone company records, doesn't know anything about it, is whether or not there was a telephone call to his apartment in November of 1970, and that is all it amounts to.

MR. KEEGAN: I would be willing to put in a sealed envelope or give to your Honor for your Honor to examine and then put in a sealed envelope the original --

THE COURT: The only thing you can establish through this witness on cross-examination is whether or not there was a phone call from Intersimone to him.

MR. KEEGAN: You are suggesting I ask if Intersimone called him on that date?

THE COURT: About that time and this may or may not refresh his recollection, but this is not independent evidence at this point because he doesn't know anything about this bill. You can try it with him, but he doesn't know anything about this bill.

MR. KEEGAN: Your Honor, because of the allegations in the 3500 material, which I don't think it is necessary to deny at this time -- I don't want every other call in the government's possession, and that is why it is blocked out.

MR. BELLER: I object to this coming into evidence, which I understand is not going to happen at the moment, and I don't care if defense counsel don't object to my discussing documents before they are in evidence, but I object.

THE COURT: It depends on the circumstances. I sustain your position at this point.

MR. KEEGAN: I must admit I am slightly confused and don't want to do anything to upset anybody, but may I ask him if this is his telephone number that was called on--

THE COURT: No, there is no foundation for him knowing that that is a record of the phone company.

MR. KEEGAN: I can ask if he knows his own phone number at 180 West End Avenue.

THE COURT: Yes. I feel it appropriate also to make an observation of my own, which calls for no comment by anybody, but Mr. Beller had asked that counsel identify themselves and their clients and defense counsel took the position that this jury would find it utterly impossible to keep track of who was who and then defense counsel decline to identify themselves on the record, which I view as a little contrary to their concern that the jury would not be able to keep track of which defendant was which.

MR. KEEGAN: I agree with your Honor and I identified myself.

3 am mps

Q Mr. Brown, I am handing you back what has been marked Defendant Intersimone Exhibit D for identification.

Now, you recall your own telephone number at 180 West End Avenue, do you not?

A I don't think so. Not at this time.

Q Well, look at the exhibit and see if that helps you to recall what your telephone number was while you were living at 180 West End Avenue.

A Yes.

Q Will you tell us what that was, please?

A 787-8084.

Q Now, does that document refresh your recollection that the transaction you claimed involved four kilograms of heroin actually took place in the fall of 1970 and not 1971?

A Sir, I can't determine that, because I don't know what this phone call was based on.

Q In other words, you do not know now whether the four-kilogram transaction took place in the fall of 1970 or the fall of 1971?

A This is what I am saying: Yes; I do not.

Q And this is the best of your recollection?

A Yes.

MR. KEEGAN: Your Honor, at this time I offer Defendnt Intersimone's Exhibit D for identification into evidence.

MR. BELLER: Objection.

THE COURT: Sustained.

MR. KEEGAN: I didn't hear that.

MR. BELLER: I object to the offer.

THE COURT: The objection is sustained.

Q Now, you also testified you first met Mr. Intersimone in approximately 1959; is that correct?

A That's correct.

Q And the people present at the time were Jimmy Richardson, yourself, Mr. Intersimone and a fellow named Mojo?

A That's correct.

Q Is Mojo alive?

A I really don't know, Counselor.

Q When is the last time you saw Mojo?

A I would say in 1970.

Q And where did you see him?

A On 125th Street. He was walking, and I passed him, and I said, "Hello" to him.

He said, "Hello."

Q Is Jimmy Richardson alive?

you a name and telephone number of a friend in Massachusetts that she should contact if she needed any assistance?

A He did.

Q And did he attend the funeral or the wake of your son Todd?

A Yes; he did.

Q Getting back to the 1971 transaction, Mr. Brown, you testified, I believe, that you mixed the package that Benny gave you with some other heroin that Beansie had given you; is that correct?

A That's correct.

MR. KEEGAN: Your Honor, I would like to make a correction in the transcript at that page. I believe Mr. Beller would agree that this is the testimony --

THE COURT: Why don't the two of you sort of get together here and come to some agreement so that you can make a statement about it?

(Pause.)

MR. KEEGAN: It is on page 1147, Mr. Beller.

MR. BELLER: Yes.

MR. KEEGAN: We have agreed, your Honor, that on line 14, page 1147 of the transcript, the word "Benny" should be changed to "Beansie".

THE COURT: All right.

Q And after you mixed the heroin that you got from Benny in 1970, you mixed it with heroin you already had on hand from Beansie; is that correct? Is that your testimony?

A Would you repeat that?

THE COURT: Would you read it back, please.

(Question read.)

MR. BELLER: I object to the qestion, your Honor.

THE COURT: -Overruled.

Q You may answer the question.

A No.

Q You did not so testify?

A Not as in 1970, no.

Q Oh, you testified it was 1971?

A Yes.

Q But now you are not sure if it was '70 or '71?

A I'm sure it was '71.

Q Oh, now you are sure it was '71?

A Either '70 or '71.

Q All right. Let's call it the four-kilogram transaction, because of your doubt; okay?

A Okay.

Q Did you testify that you mixed the four kilograms you got from Benny with heroin you already had from Beansie?

A That's correct.

Q Did you ever testify or tell Government agents that you simply passed the four kilograms along to somebody else?

A No. I don't recall it. I might have.

Q I am sorry. You don't recall that?

A No; I don't.

Q Did you tell Government agents you just gave it to somebody?

A Gave it to someone?

Q Yes.

A No; I don't think I did.

Q Did you ever tell agents you gave this to someone else to move?

A I might have.

Q And when you told them that, you never mentioned testing it or cutting it or mixing it; is that correct?

MR. BELLER: I object, your Honor, to his saying, "When you told them that".

THE COURT: Is this in connection with the last answer?

MR. KEEGAN: Yes.

THE COURT: Well, let's put it in a little better form.

The objection is sustained.

Q You described what you did with the four kilograms you claim you got from Mr. Intersimone prior to the trial, did you not?

A Yes; I did.

Q And you told the agents what you did with the four kilograms, did you not?

MR. BELLER: Your Honor, I object to the form.

May we have the different sets of agents established?

THE COURT: Yes. I think you will have to be more specific here.

MR. KEEGAN: All right.

Q In a taped interview of May 4, 1975, with an Agent Gaffney --

MR. KEEGAN: Page 13, Mr. Beller.

MR. BELLER: Will you give me the exhibit number?

MR. KEEGAN: Exhibit 3505-O-5.

Q (Continuing) Did you tell Agent Gaffney that you had simply given the four kilograms to somebody else to move?

A I don't recall without seeing it.

Q Before we get to that, let me go into another area, or the same area but a different question.

As you sit there now, you recall testifying it was four kilograms?

A I said it was either three or four.

Q That is your direct testimony: either three or four?

A I'm quite sure it was.

Q Referring to page 1146 of the transcript, I ask you to read the section which I will mark off -- which I would mark off if I had a pen with me --

MR. KEEGAN: I have one now.

Q (Continuing) I ask you to read the section on page 1146 which I have marked.

A 7 to 12?

Q Yes. Lines 7 to 12.

Having read that, is your memory refreshed now as to your direct testimony of some three or four days ago?

A Yes; it is.

Q And did you say three or four kilograms?

A At that time I did say four kilograms.

Q In other words, you did not say three or four kilograms?

A Not at that time, I didn't.

Q This is testimony taken two or three days ago?

A At that time I said four kilograms; yes.

Q Right. Now, did you ever say it was five, six or seven kilograms?

A No, I said it was three or four kilograms.

Q I am showing you what has been marked Government's Exhibit 3505-0-5 for identification, page 13. If you want to read parts of pages 12 and 13 to get the sense of it, you may.

A On this page?

Q Yes. To yourself, please.

(Pause.)

Q Have you -- I'm sorry. Have you finished reading that?

A Yes, sir.

Q Now, does that refresh your recollection as to whether you ever testified or ever told anybody that the transaction in question was four, five, six or seven kilograms of heroin?

A No; I did not.

Q That does not refresh your recollection that you once said that this transaction involved four, five, six or seven kilograms?

A No. Not to my knowledge.

Q Does it refresh your recollection that you once said the transaction was five, six or seven kilograms?

A I don't recall.

Q Do you recall this interview of May 4th at all?

A Yes.

Q - Did you say it might have been five or six or seven kilos?

A I could have been in error at the time.

Q No. I am not worried whether you were in error. What I am asking is, did you say this?

A Yes. I had to say it.

Q So you said at one time that the transaction in 1970 was five, six or seven kilograms?

A That's correct, according to that.

Q And you testify here under oath that it was four kilograms?

A Well, I was in error at the time I said five or six.

Q And you were in error when you said four?

A I said three or four.

Q You just read the transcript of your prior trial testimony, and you never said three or four, did you, Mr. Brown?

A I said it to one agency.

Q At the trial you said four, did you not?

A Yes; I did.

Q Prior to the trial, you said it might have been five, six or seven, did you not?

A Yes.

Q And a little while ago you testified it might have been three or four, at this trial, did you not?

A That's correct.

Q $20,000 was the price of a kilogram of heroin at the time?

A Yes; it was.

Q So this transaction could have been, if it was three kilograms, $60,000, or seven kilograms, $140,000.

A That's correct.

Q A mere $80,000 difference?

MR. BELLER: Objection.

THE COURT: Sustained.

Q Did you also testify, Mr. Brown, that you mixed whatever number of kilograms you got from Mr. Intersimone with some heroin you already had on hand from Beansie?

A Yes; I did.

Q And just so the record is clear, Benny and Beansie are not the same individual, are they?

A No; they are not.

Q That was your trial testimony: that you mixed it; is that correct?

A That's correct.

Q In a taped interview of May 4, 1975, Government's Exhibit 3505-0-5, page 13, did you tell Gaffney that you simply gave whatever Benny gave you to somebody else?

A I don't recall.

Q Did you tell him you gave whatever Benny gave you to someone else to move?

A I might have said that.

Q And did you tell him you didn't get a percentage of it?

A That I didn't get a percentage of it?

Q Yes.

A I don't recall telling him that.

Q Did you tell him you didn't want the percentage of it?

A I might have said that.

Q And did he then say to you, "Well, I'm just trying to get at him", meaning Intersimone?

A Say that again?

Q When you told Agent Gaffney that you didn't get a percentage of it, did you tell the agent, I didn't want a percentage of whatever this transaction was"?

A I might have said that.

Q When you said that, did the Drug Enforcement Agent, Gaffney, say, "Well, I'm just rying to get at him," meaning Intersimone?

3 MR. BELLER: FBI agent.

MR. KEEGAN: I will accept the correction.

Q Did the FBI agent say, "I'm just trying to get at him", meaning Intersimone?

MR. BELLER: He didn't say that.

MR. ANOLIK: I object to the speeches being made.

THE COURT: I am surprised the objection wasn't made earlier.

MR. KEEGAN: I object to the Court's comment.

Q I show you Government's Exhibit 3505-0-5, and I ask you to read the bracketed portion to yourself.

A All right.

(Pause.)

A (Continuing) I have read it, Counselor.

Q You have read it?

A Yes.

Q How, does that refresh your recollection that in discussing this transaction that you had with Mr. Intersimone in 1970 or '71, that you told the FBI agent that you just gave it to somebody?

A Yes, sir.

Q Referring to the package you claim you got from Intersimone?

A That's correct.

Q And you said you gave it to somebody to move, you know?

A Correct.

Q And you told him you didn't even want a percentage of it?

A That's correct.

MR. BELLER: Your Honor, I am going to object to it.

THE COURT: No, overruled. I will let the witness' answer stand.

MR. BELLER: Your Honor, may I make a statement?

T4 (In open court)

BY MR. KEEGAN:

Q Mr. Brown, did you tell the Agent Gaffney on May 4, 1975, "I gave this to somebody anyway," do you know. Do you still have that in front of you?

A Yes, according to this I did.

Q You don't doubt the truth or accuracy of this transcript, this government transcript, do you?

MR. BELLER: Objection.

THE COURT: No, overruled.

A No, sir, I can't.

Q And Gaffney said --

THE COURT: Mr. Brown, it is not whether you can, it is whether you do.

THE WITNESS: I don't.

THE COURT: Do you doubt the accuracy of it?

THE WITNESS: No, I don't.

Q Mr. Gaffney said, "He gave it to you and you gave it to somebody else," is that correct?

A Say that again?

Q Gaffney then said to you, "He gave it to you and you gave it to somebody else," is that correct?

A That's correct.

Q And you said, "Yeah, to move, you know," is that correct?

A According to this, it is correct.

Q I want you to focus in your memory as to whether it is correct or not. If it is not, I want you tell me that. Do you understand?

A I understand.

Q Then Gaffney said, "And you didn't get a percentage of it," is that correct?

A Yes, it is.

Q And you said, "I didn't want any," is that correct?

A That's correct.

Q And then Gaffney said, "Well, I just -- I'm trying to get at him," is that correct?

A According to the document.

Q Do you recall him saying that?

A Yes, I recall him saying it.

Q And you knew he was referring to Intersimone?

A I imagine he was.

Q That is who you were discussing at the time, were you not?

A Yes, I was, counsel.

Q You didn't mention anywhere in this taped interview that you tested it, cut it or mixed it, did you?

is that correct?

A That's correct.

Q And Todd's death was January 13, 1972?

A Correct.

Q On the occasion when you say, or testified, I'm sorry -- on the occasion you testified that Mr. Intersimone sold you Epsom Salts, you called him, did you not?

A Oh, yes, sir, I did.

Q In 1969?

A It was around that time.

Q Do you remember when in 1969?

A Truthfully, I can't.

Q How much did you pay him for the Epsom Salts?

A It was the same thing $20,000.

Q Shortly thereafter he moved to Accord, New York, did he not?

A I think he did, yes.

Q About 1970?

A I don't know the year. It was '69 or '70.

Q And you continued talking to him on the phone, at least, during the time he was in Accord, New York?

A That's right.

Q Did you ever tell him that you were close to or knew Don King, the promoter of some of the Ali and othe fights?

A Yes, I did.

Q Did he inquire of you concerning the champ's fitness, his training, things of that sort?

A Yes, he did.

Q Tried to get some --

MR. BELLER: Your Honor, may we have a side bar?

THE COURT: Mr. Beller, what for?

MR. KEEGAN: Your Honor, I would rather not have him tell us what for.

THE COURT: I don't see--

MR. KEEGAN: Go ahead, Mr. Beller, if you want to tell him.

THE COURT: Is it essential?

MR. BELLER: Yes, your Honor.

THE COURT: All right.

(At the side bar)

MR. BELLER:Your Honor, they know all of our evidence, they know what testimony is coming in and I haven't the slightest idea what testimony is coming in and there is no necessity to bring in testimony about Muhammed Ali and Don King unless it is relevant. I don't know what the questions are that are coming and I need an offer of proof.

MR. KEEGAN: I am willing to give the offer at this time, but I think the proper procedure is to object on relevancy if it is not relevant when that happens. The offer of proof is that he was a drinking buddy of Jack Brown-

THE COURT: He is trying to establish a social relationship.

MR. KEEGAN: And he sought inside information on fights in order to lay bets.

THE COURT:I sensed that is where it was going.

MR. BELLER: I didn't, your Honor, but I have to ask for offers of proof--

THE COURT: Well, no, not necessarily.

MR. BELLER: It seems to me there would be a reason to put in information about Muhammed Ali and Don King and it might or might not be relevant.

MR. KEEGAN: We can't come up every time he makes an objection, your Honor.

THE COURT:You make an objection if you feel it is not relevant. If you made the objection at this point I would have overruled the objection from the bench. It seems to me not harmful and I can see what he is trying to develop. Maybe he won't be able to develop it and maybe it won't help him if he does develop it, but it seems arguably relevant from his point of view.

(In open court)

THE COURT: Go ahead, sir. What was the last open question?

(Record read)

BY MR. KEEGAN:

Q Did Mr. Intersimone attempt to get information from you about the champ's training habits, whether he was fooling around or really working hard, things of that sort?

A He did.

Q Did he tell you that he wanted to know that in order to make bets on fights?

A That's correct.

Q You were happy to give him that information, were you not, Mr. Brown?

A I was.

Q He did not attend the Ali comeback fight against Quarry down in Atlanta, did he -- Mr. Intersimone did not attend?

A Muhammed's first fight as to him coming back to the ring?

Q Right.

A No, he did not.

Q Did Mr. Intersimone ask you to lay a bet for him at ringside?

A Yes, he did.

Q Do you remember the size of the bet?

A It wasn't a big bet. It was a small bet.

Q $5?

A No, it was about $500, I think.

Q $500 bet?

A Yes.

Q Who did he bet on?

A Muhammed.

Q Did he win?

A Yes, he won.

Q Did you pay Mr. Intersimone the money?

A I don't recall.

Q Did you ever have a discussion with Mr. Intersimone concerning the possibility that you and he would try to become managers or promoters for Ali?

A I think he discussed it with me, yes.

Q It never came to pass, did it?

A No.

Q After the Epsom Salts and after he moved upstate, you developed a connection with Beansie, or Guarino, Dellacava and Capra, is that correct?

A After he moved, yes.

Q And you did business with these three gentlemen from approximately 1970 down to the time of your flight, in April of '73, is that correct?

A Yes, I did.

Q And you bought heroin from them two, three times a month?

A I don't recall how many times a month, but I bought it whenever I wanted, I would say.

Q You bought from them whenever you wanted to?

A Whenever they had it and I wanted it, yes.

Q They are named as defendants in this case, are they not?

A Sir, I have not seen an indictment.

Q You are about to.

MR. KEEGAN: May the record reflect I am showing the witness the indictment in the case?

Q So those three are named as defendants in this case, are they not?

A Yes, they are.

Q They were also named as defendants in the case in which you became a fugitive, were they not?

A Yes, sir, they were.

Q When you were interviewed upon your surrender you explained to various agencies your relationship to those three gentlemen, did you not?

A I did.

Q And you at some point inquired of the status of that case, because you also were a defendant in this, right?

A Explain that a little better so I can understand it.

Q You testified that at some point an agent told you that the case against you had been dismissed, the Capra case?

A That's correct.

Q Did the agent also tell you that Capra, Guarino and Dellacava got 12 to 14 years?

A Oh, yes.

Q Tell me, Mr. Brown, did that fact have any bearing on your willingness to cooperate with the government?

A None at all.

Q You were not concerned that you also might get 12 to 14 years if you were tried in the Capra case?

A No, sir, not at that time.

Q So your testimony here is in no way influenced by the fact that you might avoid a lengthy jail sentence?

A Not at all.

Q It is not influenced by the fact that you yourself are not a defendant in this case?

A Not at all.

Q And the letter to your lawyer granting you immunity is a formality that was unimportant to you?

A It was important to me concerning my safety.

MR. RICHMAN: Your Honor, I didn't hear that answer.

MR. KEEGAN: Well, I will tell you what the answer was, if you want me to.

MR. RICHMAN: May I have the answer read back, your Honor?

MR. KEEGAN: Are we going to have it read back?

THE COURT: No. Go ahead, Mr. Keegan.

Q In the Capra case they had wiretaps of you speaking to Beansie and others, is that correct?

A That's correct.

Q During the period 1965 to '67 you had as your sources of heroin Pontiac?

A That was one.

Q A fellow named Jinx, in about '67 or '68?

A That's correct.

Q A guy named Joe Paradise?

A Correct.

Q A guy named Flo Isabella?

A Correct.

Q A fellow named Alphonse?

A Correct.

Q A fellow named Mike Sedotto, S-e-d-o-t-t-o, Jr.?

A Junior, yes, that's correct.

Q Tell me, Mr. Brown, when you finally picked up the package of Epsom Salt and looked at it, how long did it take you to realize that it wasn't heroin?

A Two to three days.

Q No, when you looked at it, how long did it take you to realize?

A Oh, I'm sorry. Right away.

Q Would it be fair to say that a man such as you, who has been dealing in drugs most of his adult life, could never be fooled and take Epsom Salts for heroin?

A I can't answer that yes or no.

Q Well, you could never be fooled by Epsom Salts for heroin if you looked at it, could you?

A Not at all.

THE COURT: Is this a good time to take a break?

MR. KEEGAN: Yes, your Honor.

THE COURT: All right, we will take the first of two short recesses this morning.

(Recess)

Q I said, "usually"?

A Well, when you say "usually", how many -- what do you mean by that? Every day or --

Q I am saying, sometimes you cut heroin and sometimes you didn't?

A That's correct.

Q How much heroin would you estimate you handled in the period of the indictment, '68 down to '76 -- eight years?

A I could only give you an estimate, to the best of my knowledge.

Q What is the estimate?

A Fifty or maybe sixty kilograms.

Q And it wasn't always in kilogram quantities; is that correct?

A That's correct. That's correct.

Q You started small; right?

A When I first started?

Q Right.

A Yes; I did.

Q So if there were fifty or sixty kilograms, it may have been many more instances?

A That's correct.

Q Now, returning to that interview of May 4, 1975, with the FBI Agent Gaffney, after he said to you, "Well, I just -- I'm trying to get at him", meaning Mr. Intersimone, do you recall what you said to him?

A After he made that remark?

Q Yes.

A No; I don't.

Q I show you what has been marked Government's Exhibit 3505-O-5 for identification, page 13, and I will point to the particular line I have in question.

A Only this line?

Q Yes. Read that and see if that refreshes your recollection as to what you said to Agent Gaffney when he said, "Well, I'm trying to get at him".

A Yes.

Q What did you say to Mr. Gaffney?

A Do you want me to say it out loud?

Q If it refreshes your recollection, tell the jury what you said to Gaffney.

A "Yes, but I"m telling the truth."

Q And that statement, "Yes, I'm telling the truth", followed your whole conversation about what you did with the package Mr. Intersimone allegedly delivered to you? It was all part of that conversation; right?

A I would say yes.

Q Now, you also told the agents at some point in your interviews about --

MR. KEEGAN: Withdrawn.

Q Mr. Intersimone is Italian, is he not?

A What?

Q Italian.

A Yes. He is Italian.

Q You also told the agents about Capra, Guarino and Dellacava, did you not?

A Yes.

Q All three of those genlemen are also Italian?

A That's correct.

Q You were informed at that point that the earlier case involving you, Capra, Dellacava and Guarino had already gone to trial in your absence? You were aware of that; right?

A Not from the same agency that you are referring to.

Q No. I am just saying, at any time in the interviews you have had with the Government prior to this trial.

A Yes, sir. That would be correct.

Q And you were aware of the jail sentences that Capra, Guarino and Dellacava had received, are you not?

A Yes; I was.

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Q During all the intterviews with all the various agencies and prosecutors, did you ever get the impression that they weren't terribly interested in Capra, Guarino and Dellacava?

MR. BELLER: Objection.

THE COURT: Sustained as to form.

MR. KEEGAN: Okay.

Q Did they ever tell you, "Well, we've gotten them already, so they aren't very important"?

A I'm asking you as to whom, sir, what -- in reference to the three parties that you are speaking about?

Q I don't need the name of who said it, Mr. Brown. What I would like to know is, did any of the Government agents or any prosecutor say to you, in words or substance, "Well, we have already convicted Capra, Dellacava and Guarino, so they aren't so important"?

A I would say yes. One agency did.

Q In addition to the statement that we have gone over from Gaffney, did any Government agent or prosecutor say to you, in words or substance, "We really want Intersimone"?

A No, sir; they didn't.

Q Did you get that impression?

MR. BELLER: Objection.

THE COURT: Yes; sustained.

Q Did any agent ask you, during any of the period of your preparation, "Can you tie together a narcotics conspiracy on Benny", referring to Intersimone?

A Was I asked that?

Q Yes.

A No; I was not.

Q You are sure? You are clear? You are positive that you were never asked that?

A I'm not positive, but I'm almost certain they did not.

Q They did not ask you that?

A They did not ask me that.

Q Well, you have had a year and a half, off and on, working with the Government, so think hard about that again.

A Well, there were so many people they were asking me about, I couldn't give you a fair answer to that.

MR. KEEGAN: I am showing the witness what has previously previously been identified as Exhibit 3505-0-5.

Q Just read that to yourself, Mr. Brown, and indicate when you have read it?

(Pause.)

A I have read it.

Q Now having read that, does that refresh your recollection that FBI Agent Gaffney said to you, on May 4, 1975, "Could you tie together a narcotics conspiracy on Benny?" Did he ask you that?

A Yes. From this, he did.

Q And the Benny he was referring to was Intersimone?

A Yes; it was.

Q And you said, "Could I tie one?"

A Yes.

Q And he said, "Yeah".

A Right.

Q You then responded, "Would I or Could I?"

A Yes.

Q And he said, "Could you?"

A Yes.

Q And then you said, "As a result of my admission and as a result of my involvement, I would have to be the co-conspirator of the one to tie him in"; is tha correct?

A That's correct.

Q And Gaffney said, "Yeah"?

A Yes.

Q And you said, "Nobody else could"? Is that correct?

A That's correct.

Q At this point, Mr. Brown, you were sufficiently conversant with the law to know the term "co-conspirator", were you not?

A Will you tell me that in a fashion that I can understand?

MR. KEEGAN: I will withdraw the question.

Q I noticed in one prior section of your testimony you used the phrase "I relieved the officer of his weapon", I think you said; is that correct?

A That's correct.

Q Would it be fair to say, Mr. Brown, that you have been involved with Government agents for such a period of time, for such an intensive period, that you now speak like a Government agent?

A Do I?

Q Have you ever heard the expression "I took his piece from him"?

A From any other person, other than myself, is that?

Q During your sojourn here on earth, have you heard the expression "I grabbed his piece"?

A I heard it from the underworld.

Q But you didn't use that expression in your testimony here, did you?

A No. I haven't had any reason to.

Q You said, "I relieved him of his weapon"; right?

A That's correct.

Q "A piece" used to mean, when you were a member of the drug culture"?

MR. BELLER: Objection, your Honor.

THE COURT: Sustained.

Q Well, what did "a piece" mean to you in your former life?

A A weapon.

MR. BELLER: Objection.

THE COURT: Sustained.

Q Now, after your intensive debriefing and interviews by the Government for this period when you were in Washington, some telephone calls were made to some people and were recorded; is that corract?

A Yes; that's correct.

Q Did you make a telephone call to Mr. Intersimone, a taped telephone call -- let me finish; it's a long question.

Did you make a taped telephone call to Mr. Intersimone in an attempt to gain evidence of your claim that he was involved in drugs?

MR. BELLER: Objection to form, your Honor.

THE COURT: Yes. Sustained.

Q Did you make a taped telephone call to Mr. Intersimone at any time after your surrender?

A Never.

Q Was such a telephone call discussed?

A Never.

Q Now, you visited Mr. Intersimone on a July Fourth weekend at his home in Accord, New York, did you not?

A Yes, sir; I did.

Q And at that time he borrowed five thousand dollars from you, did he not?

A Yes; he did.

Q Did he ever repay it?

A No; I never saw him again.

Q Did he tell you that he was involved in land transactions and hoped to make a lot of money in land up in that area?

A He spoke to me about some property that he had or was looking forward to investing it, something of that nature. I don't know exactly the words.

Q And from your telephone calls to Mr. Intersimone, would you describe his property, please, as best you can do it?

A He lives on -- on top -- he lives on a house which is on the top, like on a hill, near Hampton Roads. You have to go on a road in a circular movement to get to his house. Before you get to his house, he has a pond, also a small boat, a rowboat, and the house is white, and it's Colonial-type, I think, and it's -- no other houses next to him. A detached house.

Q Is it typical of houses located up in the area of Accord, New York?

A I would say it is typical of the houses, yes.

Q At that time did he have the chickens and goats and ducks on the property?

A There could have been some ducks in his pond.

Q It was not a palatial mansion, I take it?

A Was it a mansion, like? No; at all.

Q Now, when you called him, as you did on occasion, did he have an answering service device attached to his phone?

A Yes; he did.

Q And did he explain to you that was because he would sometimes be too far from the house to grab the phone if it started ringing?

A That's correct.

Q He lives on a nine- or ten-acre piece of land; is that correct?

A That's correct.

Q And people would leave messages to call numbers on that message recording device; is that correct?

A Yes; they did.

Q And he would return the call?

A He would return mine.

Q You are right. I guess you wouldn't know if he returned others'.

Did you also tell the agents -- well, isn't it a fact that Mr. Intersimone never had anything to do with your cocaine dealings?

A No; he did not.

Q He never bankrolled any cocaine deals?

A Not at all.

Q He never sold you any cocaine?

A Never.

Q He never bought any cocaine from?

A From me?

Q Yes.

A No; he did not.

Q And you never gave him any?

A Not at all.

Q Now, you at some point utilized or imvolved your son-in-law in narcotics trafficking; is that correct?

A You are speaking about Michael Parker?

Q Yes.

A Yes.

Q And that in about 1970?

A Um -- around that time, I would say.

Q And by the time you surrendered yourself, in 1975, you were asked about Michael Parker, were you not, by the FBI? Were you not?

A Yes; I was.

Q And did you tell the FBI that Michael Parker, your son-in-law, is a major Washington, D.C. area hoodlum?

A Hoodlum?

Q Yes.

A No; I did not tell them that.

Q I see. Did you tell them that Parker was involved in killing on contract, importation and sale of illegal narcotics and other illegal enterprises?

A Yes; I did.

Q Now, you have pending some charges up in the State Court, do you not?

A Do I have some pending?

Q -- charges up in the State Court?

A Yes, sir; I have.

Q And do you recall the name of the Assistant District Attorney who handled the case where you threw the suitcase out the window?

A Yes; I do.

Q The case where the evidence was suppressed --

MR. COHN: May we have a side bar, your Honor, before this continues?

May I speak to Mr. Keegan for a moment?

(Pause.)

MR. KEEGAN: Thank you, Mr. Cohn.

Q The charges essentially involved possession of weapons?

A In 1969?

Q Well, I guess they are '72 cases, are they not?

MR. BELLER: Your Honor, could we start over?

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I am confused as to where this is coming from.

MR. KEEGAN: I think I will just withdraw the whole line of questioning, your Honor.

Q Mr. Brown, your second son, Jason, by Jan, was born in November of '72; is that correct?

A That's correct.

Q And prior to his being baptised or christened, you had to take it on the lam, as they say, or become a fugitive?

A I did.

Q And did Jan ask Mr. Intersimone to be the godfather for your son Jason?

A She did.

Q And did you do that?

A Um --

MR. KEEGAN: Let me rephrase the question. I see he has a problem with it.

Q Is he the godfather of Jason? Yes or no.

A Yes; he si.

(Continued on next page.)

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Q Is a girl named Penny the godmother?

A That's correct.

MR. KEEGAN: I have no further questions, Mr. Brown. Thank you.

MR. ANOLIK: Your Honor, I am next.

CROSS EXAMINATION

BY MR. ANOLIK:

Q Mr. Brown, my name is Mr. Anolik. We have not met before, have we?

A Never.

Q You know that I represent Mr. Brightman? Are you aware of that fact?

A Well, I see you sitting with him and I assume that.

Q You know that you are engaged now as a witness in a trial whereby certain charges have been brought against my client and the other defendants here as a result, in some part, of your testimony before a grand jury. You are aware of that?

MR. BELLER: Objection.

MR. GOTKIN: I am going to object to that too, your Honor.

MR. ANOLIK: I am talking about my client primarily, your Honor.

THE COURT: Well, I will sustain that objection

MR. KEEGAN: Your Honor, I've asked to approach the side bar because I want a ruling as to whether Mrs. Rosner's last questions have opened up the door with respect to my client and his tutoring.

THE COURT: I haven't had it urged upon me yet.

MR. KEEGAN: My question to approach the side bar was to get a ruling as to whether questions recently posed by Mrs. Rosner has opened the door as to my client, or in the alternative whether you intend to try and offer the part that alleges that Benny was tutoring Michael Parker along these lines.

MR. BELLER: Well, I don't know. I have to examine the transcripts.

THE COURT: At this point let's assume it is not admissible. Go ahead.

MR. KEEGAN: Fine, thank you.

(In open court)

RECROSS EXAMINATION
BY MR. KEEGAN:

Q Good morning, Mr. Brown.

A Good morning.

Q You remember my name?

A No, sir.

Q You remember when I cross-examined you?

A I do.

Q What date was that?

THE COURT: You want the date?

MR. KEEGAN: The date.

THE COURT: What is the relevance of that question?

MR. KEEGAN: Memory, your Honor, just testing his memory.

THE COURT: What the date was some time, days ago?

MR. KEEGAN: Yes, your Honor.

THE COURT: All right. Do you remember the date of the month?

BY MR. KEEGAN:

Q How about the year, Mr. Brown?

THE COURT: Oh, please now counsel. That question is frivolous.

MR. KEEGAN: Withdrawn. I apologize.

Q Mr. Brown, you have been a close friend of Mr. Intersimone for almost 20 years now, is that correct?

MR. BELLER: Your Honor, I object. This is a recross.

MR. KEEGAN: Well, I have to ask some preliminary questions here.

THE COURT: Overruled. Go ahead.

Q Is that roughly accurate?

A About 18 years, yes, sir.

Q You remember when I asked you when the transaction you testified about four kilograms occurred? Do you remember me asking you about that?

b3 A Yes, sir, I do.

Q And you remember answering truthfully, "I can't tell you when," words to that effect, "It was either 70 or 71."

A Yes, I do.

Q And then Mr. Beller asked you on redirect about the same transaction, did he not?

A I think he did, yes.

Q You're not sure he was asking you about the same transaction?

A I said I think he did about the same transaction, the four kilos.

Q When you say you think he asked you about the same transaction do you mean that you're not sure whether he was asking you about the same transaction I was asking you about?

A No, as to the cross or the direct I wasn't sure, as to the recross or the direct.

Q He asked you about the transaction on direct originally, did he not?

A Yes.

Q And you said it was four kilograms?

A Four kilograms, three or four kilograms.

Q Mr. Brown, on my recross I showed you, you remember me showing you the direct testimony?

A Yes, sir, I do.

Q And didn't you read that direct testimony at that time?

A Yes, I did.

Q And then didn't you retract your testimony and say that your testimony was in fact it was four kilograms?

A Yes, I did.

Q And you retracted the part where you claimed your testimony was to the effect that it was three or four kilograms?

A That's correct.

Q And then we went through the testimony or the prior statement that it might have been five, six or seven kilograms?

A Yes, sir, we did.

Q All right. Now Mr. Brown, I showed you a transcrip 3505-05 for identification at the time I asked you about the date of this alleged transaction. Do you recall that?

A Yes, I do.

Q And I referred you to a portion underlined in red. Do you remember that?

A Yes.

Q And I asked you to read that yourself.

MR. BELLER: Your Honor, I object to this. We're going over the cross-examination.

MR. KEEGAN: I have to lead up to it, your Honor, just as Mr. Beller has to lead up on redirect.

THE COURT: All right, overruled. Go ahead.

Q You recall I asked you to read over the underlined section in the document that I handed you?

A Underlined in red, yes, sir, I do.

Q And you remember the color red?

A Yes.

Q And you read that?

A Yes, I did.

Q And when you read that that your answer was that you couldn't truthfully say whether it was 1970 or 1971, is that correct?

A That's correct, sir.

Q Now, do you think I tricked you by showing you this transcript?

MR. BELLER: Objection.

THE COURT: That's irrelevant.

MR. KEEGAN: Your Honor, it's not irrelevant. It has to do with his memory and what's going on in this courtroom. I say it's a critical thing.

We're talking about his recollection was refreshed. I have a right to explore that in every way possible.

THE COURT: That you do. The specific question --

MR. KEEGAN: I will connect this up in a minute.

THE COURT: All right. Overruled. Go ahead.

Q Do you think I tricked you by showing you that transcript?

A No, sir, I don't think so.

Q And do you recall you asked me, "Just the underline portion in red? Is that all I'm allowed to read?"

Do you remember that?

A Yes, I do.

Q And do you recall me telling you, "No, read around it if it will help." Do you remember that?

A I don't recall that.

Q Reading from the transcript, Mr. Beller, at page 1870.

At line 12.

"Q I will show you what has been marked as Government's Exhibit 3505-05 for identification and I'll direct your attention to page 12 thereof to a section I have underlined. Will you read that yourself, please.

"A Just the underlined?

"Q Just the underlined section, yes. Well, you can read around it if you want if it will help. Just read it to yourself so there's no question about it."

Do you recall being asked those questions and giving those --

A Yes, I do, now I do, yes.

Q And do you recall what was right after the underlined section in 3505-05?

A No.

Q You have read 3505-05, have you not?

A Yes, sir.

Q On my cross-examination?

A That's right.

Q You've read it on Mr. Beller's redirect?

A I have.

Q You've listened to the tape in court with us?

A Yes, sir.

Q And you listened to the tape outside of court with Beller,is that right?

A I don't think that I did.

Q Did you listen to the tape before coming in to court on redirect, whether it was with Beller or without

Beller -- Mr. Beller -- pardon me.

A I don't recall.

Q You don't recall that. Do you recall yesterday identifying the box in which the tape is contained?

A Yes, I was, yes.

Q And that your initials were on the box?

A That's right, they were.

Q And that it reflected the fact that you had initialed it on the date that you listened to it, August 31, 1976, do you remember that?

A I remember initialing the box, yes, sir, I did.

Q And a moment ago you didn't recall your testimony of only yesterday, is that correct?

MR. BELLER: Objection, your Honor.

THE COURT: Yes, sustained.

Q You had forgotten that, didn't you? You had forgotten that you had read, that you had listened to that tape? Is that true?

MR. BELLER: Objection, your Honor.

A No.

THE COURT: Overruled, go ahead.

Q Well, let me tell you, and form a question here. Isn't the portion following what I asked you to read -- page 12, Mr. Beller, of 3505-05 -- "Right after my son died

Benny didn't do anything."?

A Yes, I recall that now.

Q You couldn't forget that, could you?

A No, I couldn't.

Q But you just did.

MR. BELLER: Objection.

THE COURT: Yes, sustained.

Q When I asked you what followed that portion you said you didn't remember, didn't you?

MR. BELLER: Objection.

THE COURT: Sustained.

Q And I allowed yo to read that portion all around it as much as would help you, didn't I?

A Yes, you did.

THE COURT: When, Mr. Keegan, just now you mean or --

MR. KEEGAN: On cross when I cross-examined him for the first time.

THE COURT: All right.

Q Now, I know it's a sensitive subject but the date of your son Todd's death is emblazoned in your memory, is it not?

A Yes, it is.

Q January 13, 1972. No doubt about that, is there?

A No, no doubt.

Q And yet when I showed you 3505-05 which refers to incident, the date of your son's death, you did not connect that up with when you had your last deal with Benny, did you?

A Yes, I did, but I didn't remember the line under that. I just couldn't remember it at the time.

Q You didn't remember it when I asked it,right, is that right?

A No, sir, I didn't.

Q And yet that event would be the most traumatic event in your entire life, is that right?

A Yes, it is.

Q In fact a man who had quit heroin addiction, reverted to the use of heroin as a result of that, is that correct?

A That's correct.

Q And yet when I showed you this 3505-05, which includes the reference to your son's death, that did not refresh your recollection as to when you had your last deal with Mr. Intersimone, did it?

A No, sir, it did not.

Q And when Mr. Beller --

MR. BELLER: Your Honor, could Mr. Keegan resume his place at the lectern please?

THE COURT: Yes.

Q But when Mr. Beller asks you how you connect the last deal you had with Benny with a date your answer is you connect it through the date of your son's death?

A Because he asked me in a different fashion.

Q So the answer you give depends upon the fashion in which the question is asked. Is that your answer?

A Well, at least he was respectful about it.

Q Oh, Mr. Brown, do you find me disrespectful?

A The way you keep referring to my son's death, yes.

Q Mr. Brown, I wish it were another event.

THE COURT: Please, counsel, come to the side bar, will you. Mr. Beller, will you come to the side bar.

(At the side bar)

THE COURT: Your questions are that you're trying to say that although his son's death was important he didn't remember that he had mentioned it after a transaction, and he might not, and he might not.

Mr. Beller turned it the other way around and said he can place it because of an event that happened.

You're saying, you mean you mentioned my client and then you don't remember that in the very next breath you mentioned your son's death. That's what you're saying to this man.

MR. KEEGAN: No, your Honor, if I may.

THE COURT: That's the effect I'm getting.

MR. KEEGAN: Mr. Beller refreshed his recollection as to the date of this event, and the reason he was able to place it in '71 was because it was shortly before his son's death.

THE COURT: That's right.

MR. KEEGAN: I showed him a transcript which contains it, the very same information, and he didn't connect it with the date of his son's death, and when --

THE COURT: No, he didn't connect, he didn't remember that after the event, after your transaction he had mentioned his son's death.

MR. KEEGAN: I showed him that and let him read it.

THE COURT: You showed him that a week ago. You think this man is going to sit here on the stand day after day after day with thousands of questions of people and he's going to --

MR. KEEGAN: You missed my point. My point is that--

THE COURT: You go ahead with the examination, but it seems to me you're going about something in a way that really doesn't get what you're getting at, and the witness is confused and I can see that. I can see that he'd be confused about it.

MR. KEEGAN: Your Honor, the point is that if that traumatic event would always remind him of when the transaction took place, could --

THE COURT: Why should it?

MR. KEEGAN: That's his testimony on redirect.

THE COURT: No. The testimony was on redirect that he had a traumatic event and he remembers something in relation to the event, not that the event reminds him of the trauma, whether the two are married to each other.

If that's what you're shooting at it seems to me
b5 that it's not all that profitable.

MR. KEEGAN: That might be so, your Honor.

THE COURT: And I just want to call it to your attention because it seemed to me we're getting the witness all tied up by why should a man say because of a certain event I necessarily remember I had a narcotics transaction.

MR. KEEGAN: And you say the obverse doesn't work, because I had a narcotics transaction I remember the date of my son's death.

THE COURT: That's exactly right.

MR. KEEGAN: I appreciate your remarks.

(End of side bar)

MR. KEEGAN: May I have the last question read back?

(Question read)

BY MR. KEEGAN:

Q Mr. Brown, do you find me disrespectful?

THE COURT: Sustained, Mr. Keegan. I do not find you disrespectful. Let's go forward. All right.

MR. KEEGAN: I'm glad somebody doesn't.

Q Now do you recall the tape was played yesterday for everybody, the jury, everybody in court?

A Yes, sir.

MR. BELLER: Your Honor, there were several tapes. I object to that.

MR. KEEGAN: I am only interested in the tape--

MR. BELLER: The witness doesn't know what Mr. Keegan is interested in.

MR. KEEGAN: When I lead into it you object and if I don't lead into it you object, too, so I'll lead into it.

Q Do you recall the tape concerning the date in which you claim you had a transaction with Mr. Intersimone being played?

A Yes, sir, I do.

Q That was played yesterday?

A Yes, sir, it was.

Q And would it be fair to say that your answer was, "Oh, that's been 1970, 1971."

MR. BELLER: I object, your Honor.

Q Is that a fair characterization?

MR. BELLER: I object. The tape is in evidence.

THE COURT: Yes, I sustain it.

MR. KEEGAN: Do you have the tape? I'll play it if you have it here. Let's play it.

MR. BELLER: We have to get the recorder.

MR. KEEGAN: You want to withdraw the objection Is that an unfair characterization?

MR. BELLER: The tape is the evidence. I don't know what the purpose is. I object to Mr. Keegan's characteri ing it.

MR. KEEGAN: Well, unless it's an unfair characteriz tion you don't really have an objection.

THE COURT: Do we have the tape here?

MR. BELLER:The tape is here but the machine is not here.

THE COURT: The machine is not here.

MR. KEEGAN: Well, is your objection that it's an unfair characterization? If not, I can't continue.

MR. BELLER: We all heard what the tape said, so assuming everybody knows --

THE COURT: Was the tape played for the jury yesterday?

MR. BELLER: Yes, it was.

THE COURT: Then we do not need to play it again.

MR. KEEGAN: Fine, then is your objection withdrawn as to my characterization?

MR. BELLER: No.

THE COURT: No. The tape is the best evidence. All right. We all heard the tape yesterday.

BY MR. KEEGAN:

Q Do you, Mr. Brown, remember hearing the tape yesterday?

A Yes, sir, I do.

Q And as you answered that question did you have some doubt in your mind as to precisely when this alleged transaction took place?

MR. BELLER: I only object as to form, your Honor. Which question is he talking about, at the time of the interview --

MR. KEEGAN: I'm talking about one question, Mr. Beller.

THE COURT: On May the 4th of 1975 did he have any question on that day.

Q When you were asked that which we played for the jury on the tape, recalling your answer now as you heard on the tape, did you have some doubt as to which year that alleged transaction took place?

A No, sir, I did not.

Q So when you said 1970, 1971, you were not resolving any doubt in your mind?

MR. BELLER: Objection. He never said that.

THE COURT: Yes, sustained. It's been answered.

Q But you gave two years, did you not?

MR. BELLER: Objection.

THE COURT: I'll sustain it.

MR. KEEGAN: Your Honor, that is in evidence.

THE COURT: If you want to get back to it we'll play the tape again. You said he gave two years. It's a question of what his answer was.

MR. KEEGAN: We have to play the tapes then.

THE COURT: Can one of your colleagues, Mr. Beller, get the machine?

Can you go ahead, Mr. Keegan, on something else?

MR. RICHMAN: May I be excused, your Honor, for a minute? I am going to take some medicine.

THE COURT: All right.

MR. KEEGAN: Your Honor, if someone else wants to cross while they're getting the tape I'll sit down.

THE COURT: You have nothing else you want to ask about?

MR. KEEGAN: I don't want to do it out of order. My mind isn't that good. Well, I'll proceed then.

BY MR. KEEGAN:

Q Now Mr. Beller, on his cross-examination of you yesterday also referred to 3505-K for identification. Do you recall that?

MR. BELLER: Your Honor, there's so many 3505 numbers, how is he supposed to know?

THE COURT: Yes, all right.

Q This is your statement that you signed in September of 1975. Do you remember that, your signing a statement in September, 1975?

A Yes, sir, I do.

Q Do you recall Mr. Beller referring you to certain sections of that statement yesterday?

A Yesterday, yes, sir.

Q Now do you recall on -- I'm going away from that subject now -- on my cross-examination do you recall me asking you whether Mr. Intersimone moved up to Accord, New York, upstate New York in approximaely 1969 or '70?

A Yes, I do.

Q Do you recall you were in frequent communication with Mr. Intersimone from the time you first met him, were you not?

A Yes, sir, I was.

Q By telephone and in person?

A That's correct, sir.

Q Would you estimate how frequently you spoke to Mr. Intersimone during the years 1969, 1970?

A I would say once a week.

Q And do you have any recollection as to whether he told you he had moved to Accord, New York, shortly after he moved to Accord, New York?

A Yes, sir, he did.

Q In other words, you knew he was up there when he moved up there?

A Yes, sir, I did.

Q Otherwise you couldn't call him, right?

A That's correct.

Q I'd like you to read on 3505-K, page 47, a section that Mr. Beller did not have you read yesterday, which is the first full sentence in the -- the second full sentence in the first paragraph.

MR. BELLER: Your Honor, I asked him to read the first three paragraphs, and read to the jury certain portions.

THE COURT: That's correct.

MR. BELLER: For everyone's benefit.

MR.KEEGAN: I stand corrected. It wasn't read into the record.

Q When Mr. Intersimone moved up to Accord, New York, he called you, did he not? He told you that he moved to Accord, New York?

A Yes, sir, he did.

Q And do you recall if he put it in the phrase, he had bought some property in Accord, New York? Is that substantially accurate as to how he expressed it to you?

A It was both ways. He said he had moved. Also that he was buying some property, also. He said the two of them, both of them.

Q Do you recall if he said both of them at the same time in the same conversation that is?

A No, sir, I don't recall if he said it in the same conversation, no, sir.

Q Did he after that first time that he told you that he had moved to Accord or bought some property or whatever phrase he used, did he later tell you that he had bought some other property in Accord, New York?

A He told me he was in the process of buying some other property.

Q And that was, as I recall it, when you saw him in July, about July 4th weekend in 1973, is that right?

A No, I think it was before that.

MR. KEEGAN: Do we have the tape?

THE COURT: Are you through with this other subject?

MR. KEEGAN: I am.

MR. BELLER: Your Honor, while we're waiting for the earphone could I approach with Mr. Keegan just for a moment.

(At the side bar)

MR. BELLER: I just wanted to know what the basis for playing the tape was.

THE COURT: The basis for playing the tape as I understand it is that he wants to indicate that at the time he made the statement he had an uncertainty in the tone of his voice as to what the year was.

He wants to ask him whether that doesn't refresh his recollection at the time that he made that statement he was not certain of the year.

MR. BELLER: Okay.

THE COURT: Right, Mr. Keegan?

MR. KEEGAN: Yes, that's correct, your Honor.

(End of side bar)

THE COURT: Mr. Keegan, can we go on to something else again please?

MR. KEEGAN: Your Honor, I am looking for something. I will as soon as I can find it.

Mr. Beller,has the tape been set up?

THE COURT: No, go on to something else. We're waiting. Go ahead.

Now, is it ready to play?

MR. BELLER: Your Honor, it's at page 12, six entries from the bottom where it says S.

THE COURT: All of this was played yesterday as I remember.

(Tape played)

BY MR. KEEGAN:

Q Mr. Brown, having had the tape replayed to you did you have any doubt in your mind when that recording was being made as to what year the alleged transaction took place?

A No, sir, I did not.

Q So that in 1970 was not an indication of doubt as far as you're concerned?

MR. BELLER: Objection.

THE COURT: Overruled.

Q In your direct examination -- well, let me ask you this --

A That's correct.

MR. KEEGAN: I forgot the question.

Q Now on Mr. Beller's redirect examination, you understand what I mean by redirect?

A Yes, I do.

Q The second time around there.

A Yes, sir.

Q You testified in words or substance that the reason you could place the alleged transaction in 1971 was because by the time your son passed away you had completely paid Benny off, is that fairly accurate?

A That's correct.

Q And October or the fall of 1970 was before your son passed away, wasn't it?

A That's correct.

Q And the fall of '71 was before your son passed away, wasn't it?

A That's also correct.

Q As I recall it you testified on direct that you gave Mr. Intersimone what money you had on hand at the time of the alleged transaction, some 20 or 25 thousand dollars, is that correct?

A That's correct.

Q You also testified that you made some ten trips to Accord, New York, to pay him the rest of the money, is that correct?

A Yes, sir, I did.

Q Now, when your apartment on 56th Street was searched they found something on the order of 70, 75 thousand dollars, did they?

A Something like that.

Q Moten was holding hundreds of thousands of dollars for you, was he not?

A Hundreds?

Q Yes.

A No, I would say he was holding around a hundred or a little better.

Q And you had thousands in safety deposit boxes, did you not?

A Thousands?

Q Yes. Do you understand the question?

A Yes, yes. I had a few thousand in the bank, I did at that time.

Q And you had been in the drug business since '59 roughly, 1959?

A I think it was a little before that.

Q And your experience you would try, would you not, to limit your contacts with people whom you say you're doing narcotics transactions with, wouldn't you?

A I tried, yes.

Q I mean the more frequently you meet with somebody the better chance there is that you might get caught and spotted or arrested, is that fair?

A Well, that all depended, you know.

Q Everything depends on something, but I --

A Who you were meeting.

Q Pardon me?

A It all depended who you were meeting.

Q Oh, are you saying that Benny Intersimone was the sort of legitimate businessman that no one would ever suspect anything of him?

A Well, no. I would say he didn't want anybody to suspect that he was doing anything.

Q And you didn't want anybody to suspect you were doing anything?

A Where he was concerned it would be fair to say, yes.

Q --So neither of you wanted to suspect anybody of you two doing anything meaning narcotics of course, right?

A Yes, I would say that would be correct.

Q And yet you made ten trips upstate to meet Benny Intersimone, to pay him what you owed him on this alleged transaction, is that correct?

A That's quite correct.

Q How much money did you take on each of the trips, Mr. Brown?

A I don't know. It varied.

Q It couldn't have been very much, could it, by your standards, I mean?

MR. BELLER: Object, your Honor.

THE COURT: Yes.

MR. KEEGAN: Well, it's relative.

THE COURT: Sustained.

Q Well, if you gave him, let's take your lower estimate, $20,000 up front, okay, and taking your testimony that it was four kilograms that you owed him for three kilograms, is that accurate?

A That's correct.

Q You owed him about $60,000?

A Around that figure, yes.

Q And you made ten trips?

A --That's right.

Q An average of about $6,000 each time?

A It would, I would bring him 2,500 at a time.

Benny wanted money any time that I had money, sir.

Q And you didn't have it in 1971 or '70?

A It's not the question of whether I had it or not, but it was the question of what I was doing with him that made the difference.

Q You owed him the money, did you not?

A Yes, I owed him and I paid him.

Q When he gave you the packages you claim he said, "Please move this fast. I need the money." Isn't that your testimony?

A That's what he said.

Q And the best you were able to do was to deliver $2,500 and make ten trips up there?

A Well, that's the way I wanted to give it to him.

Q But you wanted to limit your contacts and so did he, so that no one would suspect anything of you, didn't you?

A Absolutely in New York he didn't want nobody to see him in New York.

Q But you were willing to meet him and drive upstate, although you had already been arrested in narcotics cases?

A --That's correct.

Q Although you had recently had your apartment broken into, the 56th Street apartment?

A Yes, if he was willing to meet me I was willing to meet him up there.

Q You had no fear that you might be followed?

A I made arrangements that I wouldn't be followed or tried to.

Q And then that was your testimony on direct, was it not, that you went to Accord, New York, on about ten occasions?

A That's correct.

Q You also said that you had fully paid Mr. Intersimone by the time your son died?

A Yes, sir; I did.

Q I want you to think hard, Mr. Brown. In your mind could the transaction, that is the delivery, have occurre in 1970 and the payments have continued up to about the time your son died? Think real hard about that, please.

A No, sir, it happened in '71. When I received the drugs from Benny, and I had fully paid him before my son had died.

Q Well then, when sir. --

A In the fall of '71.

Q --What month? What is the fall to you? What month does that encompass?

A September.

Q It was September. Do you have a date?

A No, sir, I don't have a date.

Q Do you have a record?

A A record?

Q Of any kind.

A Not at all.

Q You did make some records, did you not, of certain drug transactions?

A I made some notes, yes, sir, I made notes.

Q You don't have any to show me right now?

A No, sir, I don't.

Q You don't have any to show me, do you?

A None at all, no, sir.

Q Now that was your direct testimony, ten trips up to Accord, New York, right?

A Yes, sir.

Q As I recall it -- correct me if I'm wrong -- Mr. Intersimone came down to your apartment once and picked up some money, is that right?

A Yes, he did.

Q And that was the occasion in which Frank Moten happened to be at your home at 180 West End Avenue?

A That's correct.

Q And you introduced him?

A I introduced both, yes.

Q Turning now from your direct testimony where you said that you went upstate --

THE COURT: Let's just go to the next question, please. All right.

Q Do you recall yesterday on redirect that yousaid just before Todd died, Mr. B -- this is page 2893, Mr. Beller -- Mr. B used to come to my house frequently to get money from me for the four kilos that I got from him. Do you recall giving that answer yesterday?

A Yesterday? If you could show me a record.

Q You mean you don't recall? In other words --

Answer my question.

MR. BELLER:Your Honor, he's asked to be shown the transcript.

MR. KEEGAN: I have a right to get his present recollection first, your Honor. I'll show it to him in good time.

THE COURT: Go ahead.

A Well, I'd like to see it and then if I could, there's so many things. It could, it could.

Q If I show you this and it says what I've just read you will then agree that you said it. Is that what you're saying?

MR. BELLER: Object, your Honor.

THE COURT: No, he isn't saying that. Sustained. You want to read back his earlier answer.

(Answer read)

MR. KEEGAN: My question is do you recall giving that answer to Mr. Beller yestereday, yes or no.

A Sir, if you showed me a document--

Q No.

MR. KEEGAN: Your Honor, may I have the witness instructed to answer my question?

THE COURT: He's already answered that. Go on.

MR. KEEGAN: Would the Court tell me what the answer is?

THE COURT: He answered it two questions ago, and I had the answer read to you. He said, "It could, it could. There's been so many things." That was his answer to you.

MR. INTERSIMONE: Your Honor, I feel my civil rights are being violated. This man don't remember anything.

MR. KEEGAN: Mr. Intersimone --

THE COURT: Sir, you have a lawyer. Speak to your lawyer.

MR. INTERSIMONE: Yes, sir.

THE COURT: Speak to your lawyer.

MR. COHN: Could we have a recess, your Honor?

MR. INTERSIMONE: I want honor in this courtroom.

THE COURT: We'll have a recess.

(Jury out of the box, witness is off the stand.)

THE COURT: Mr. Keegan, will you talk to your client and report to me in a few minutes please.

MR. COHN: Will your Honor consider in the recess perhaps some sort of instruction to the jury about -- I don't know what to do about it quite honestly -- but I can't help but think that this may reflect badly on all of the defendants.

THE COURT: Why don't you give some thought to what you might want me to say.

MR. COHN: I intend to, your Honor.

MR. MITCHELL: Are we going to proceed with the end of the hearing on the Jones matter?

MR. BELLER: Let's do that.

(In the robing room, Mr. Mitchell, Mr. Albert Lee Jones, the Court, Mr. Sear, Mr. Beller present.)

(Continued examination of Mr. Beller by Mr. Mitchell.)

Q Mr. Beller, when you advised the defendant that he had previously cooperated did you ask him whether he would continue to cooperate on those previous cases?

until ten o'clock the following morning and, as he says, he wants to get it finished.

I also think your Honor should take into consideration the intelligence of a defendant who can't read or write, even though your Honor has expressed an opinion on that.

THE COURT: All right. Thank you very much.

(Mr. Beller, Mr. Sear, Mr. Mitchell and Mr. Jones leave the robing room.)

(Mr. Keegan enters robing room.)

(Not transcribed.)

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on what is redactable. I think before it is offered your Honor should pass on it.

THE COURT: Absolutely.

MR. KRIEGER: At your Honor's convenience. That would pertain to my client. We have a conflict as to how much should be redacted, and I simply don't want to disrupt the Court's timetable. Any time the Court wishes, it can be done.

THE COURT: Very good.

With regard to our outburst just before the recess, I understand that it is not going to happen again.

Let me make this proposal. I suggest that I say to the jury that in the course of a trial emotions kind of run strongly, understandably so, and that the jury is directed to pay no attention whatsoever to this event, it should play no part in their determination or consideration of the case in any way. They are not to hold it against Mr. Intersimone, and obviously they are not to hold it against anybody else who is on trial.

MR.COHN: Satisfactory to me.

THE COURT: Mr. Intersimone, is that all right with you?

DEFENDANT INTERSIMONE: May I apologize to you and everybody involved?

THE COURT: Your apology is accepted and we will go forward. I understand completely because what I am saying here is my belief.

Very good.

DEFENDANT INTERSIMONE: It won't happen again, your Honor. I promise.

MR. COHN: There has been a series of articles in the Daily News on the Criminal Justice Act and the way it is applied in the courts. I have been talking to Mr. Beller about it.

I wish the Court would familiarize itself with the articles. It may present a problem. We are exploring what to do about it.

MR. BELLER: Why don't we hand these up?

MR. COHN: We can Xerox it during lunch.

(Discussion off the record at the bench with Mr. Beller and Mr. Gonzalez.)

(Jury enters courtroom.)

THE COURT: Ladies and gentlemen, I just want to observe to you, as I am sure you can understand, that during the course of a trial emotions can become quite strong, understandably so -- this little matter just before the recess -- however, you are directed to pay utterly no attention to it whatsoever. It should play no part in your determination or consideration of the case in any way, shape, form or otherwise. You are not to hold it against Mr. Intersimone and obviously you are not to hold it against anybody else in this trial. Put it completely out of your mind.

BY MR. KEEGAN:

Q Mr. Brown, during the period in April and May of 1975, while the FBI was debriefing you and taping the interview, do you recall that period?

A Yes.

Q These were lengthy interviews, were they not? They ran a long time?

A Yes, sir.

Q Some of them?

A Yes.

Q And on occasion was the tape stopped so that someone could go to the bathroom or get a drink of water or something of that sort?

A Yes, sir.

Q And during the time the tape was off were discussions continued between you and the agents?

A Sometimes it would.

Q And then the tapes would be put back on and you would pick up where you left off, is that correct?

A Yes, sir.

Q We have heard the May 4, 1975, tape here again today, have we not?

A Yes, sir.

Q How many times, if you can tell me, did you review the questions of the last alleged transaction with Mr. Intersimone between the time the tape was made and the time you used your long statement in September of '75? Do you understand the question?

A How many times?

Q Did you go over that portion of your interview between the time the tape was made and the time you signed your interview, your long sheet? Do you know what I am referring to? In September.

A I would say --

MR. BELLER: I object to the question. I don't understand it. I don't think there is any foundation for the question if I do understand it.

THE COURT: Let me hear it.

MR. KEEGAN: I will ask him if he ever did.

Q During the period between the time the tape was made and your interview which is initialed and signed in September, between May and September, '75, did you review the question of when you last had an alleged narcotic transaction with Mr. Intersimone?

A Did I review the tapes?

Q No, not the tape. Did you talk to the agent, any agent, any Government official, about when it was you had the last transaction with Mr. Intersimone?

A Yes, sir, I think -- yes, sir.

Q Do you recall who that was?

A Mr. Beller.

Q Did you speak to Mr. Beller between May, 1975, and September, 1975?

A No.

Q Was there any other Government official, agent or whatever, law enforcement official, that you discussed the date with between May and September, '75?

A No, sir.

Q You are positive?

A I'm not positive, no, but I'm quite sure I didn't go --

Q Mr. Brown, do you understand that when you are not sure of an answer to a question that it's truthful to say, "I'm not sure"?

MR. BELLER: Objection, your Honor.

THE COURT: Yes, sustained.

ws10

Brown - recross

Q Mr. Brown, do you understand that if you cannot recall a time, when asked, that it's truthful to say, "I do no t recall"?

MR. BELLER: Objection.

THE COURT: Sustained.

Q Mr. Brown, do you understand that --

MR. BELLER: Objection.

THE COURT: Mr. Keegan, we are here to get answers to questions and not to discuss it. I have sustained two of these in a row and it appears you are going into a third one.

MR. KEEGAN: I would like to be heard at the side bar.

THE COURT: No, I don't think so at this point. I will hear you at the lunch break.

Go ahead.

MR. KEEGAN: I am going to another one that I think is slightly different.

THE COURT: You can make your record at the lunch break then.

All right.

Q From the date you signed your September, 1975, statement down to the time you met Mr. Beller in approximately June of this year -- is that correct?

A That's correct.

Q -- during that period of time did you review the question of when you last had an alleged narcotics transaction with Mr. Intersimone with any Government official?

MR. BELLER: The witness has testified he met me in October of 1975, your Honor.

MR. KEEGAN: Thank you. I stand corrected.

Q Between September, when you signed your long statement, and October, when you met Mr. Beller in 1975, did you discuss the question of when you last had an alleged narcotic transaction with Mr. Intersimone, with anyone?

A No, sir, I did not.

Q When you met Mr. Beller in October of 1975, how long was the meeting, the first one?

A It was for two days.

Q And how long was the second one?

MR. BELLER: I object to the form of the question.

Q Was there a second one?

A Yes.

Q When was that?

A In June of 1976.

Q How long did that meeting take place -- how long did that take?

A July 1st.

Q Is that when it started? Was that the date of the meeting?

A That is when I came back to court, yes.

Q And how long did that meeting take?

MR. BELLER: Your Honor, he has testified that he was in New York coming to my office daily.

MR. KEEGAN: I am sorry.

THE COURT: He said he came back to New York on a certain date.

MR. KEEGAN: July 1st.

MR. BELLER: He said from June to July.

Q During the period June to July, can you give us any estimate how much time you spent with any law enforcement officials regarding this case?

A From June until July 1, until I left New York. I would say I was interviewed on numerous occasions. There came a time it was every day, and then a time lapsed in between and then the court case was put off and I went back.

Q Do you have any idea how many days would have been involved when you actually met with law enforcement officials?

A No, sir.

Q When was the third time you met with anybody with regard to your testimony in this case?

MR. BELLER: Your Honor, I object to the form of these questions.

THE COURT: I will overrule that.

Go ahead.

A Some time when I returned back to New York in June, the latter part of June -- of July. I am sorry.

Q And have you stayed in New York continuously since the latter part of July down to the present?

A Yes, sir, I have.

Q And on how many of those days, if you can recall, did you discuss your testimony with any law enforcement officials?

MR. BELLER: Can Mr. Keegan explain what he means by a law enforcement official?

MR. KEEGAN: You don't know what I mean?

MR. BELLER: If he includes me, he should say that.

MR. KEEGAN: Yes.

Q I include prosecutors, agents, investigators, Assistant United States Attorneys, summer Assistants.

You know what I mean?

A Yes, sir, I think I do.

From the time I arrived back in New York on the second occasion, I talked to law enforcement during the entire time with the exception of one whole week I didn't come downtown.

Q Going back to the first trip to New York from June to about July 1, during that time did you discuss with any law enforcement officials the date when you last had an alleged narcotics transaction with Mr. Intersimone?

A No, sir, I did not.

Q They never asked you about that date?

A No, sir.

Q And you never told them about that date?

A No, sir.

Q During the period of July to August, prior to my cross-examination -- do you understand what I mean?

A Yes.

Q Did you review the testimony that you were expecting -- excuse me -- the testimony that you were going to give at trial with any law enforcement officials?

A No, sir.

Q You didn't discuss the testimony you were going to give with law enforcement officials between July and August?

A No, sir.

Q You didn't meet with Mr. Beller?

A I met with Mr. Beller.

Q What did you talk about?

A About the preparation for the trial.

Q And he asked you questions?

A Yes, he asked me questions.

Q About the case, this case?

A Yes, he did.

Q And you gave him answers about this case?

A Yes, I did.

MR. KEEGAN: Could I explain that is what I mean by "reviewing"?

THE COURT: I think you have established that. All right.

Q When I use the shorthand phrase "reviewing your testimony," it means what you just described.

MR. BELLER: I object, your Honor. The witness said preparing testimony. That's what it is.

MR. KEEGAN: I don't mean it in any derogatory --

MR. BELLER: That's what he said.

THE COURT: Just go forward with another question. You were doing very well, Mr. Keegan.

Q I had better go back, then, to the first trip.

Did you review the facts in this case during your first trip to New York with those law enforcement officials, any law enforcement official?

A Yes, I did.

Q They asked questions and you gave answers, right?

A It was preparing for the trial.

Q Yes.

A Yes, that's what it was.

Q And is it your testimony that during that first trip to New York some time in June until July 1 no question was asked of you by anybody as to when you last had an alleged narcotics transaction with Mr. Intersimone?

A No, sir.

Q You are positive?

A I'm positive.

Q During the period of your second trip some time late in July until my cross-examination you prepared testimony or reviewed testimony, right?

A Yes, I did.

Q During that period of time did any law enforcement official ask you when was the last time you ever had an alleged narcotics transaction with Mr. Intersimone?

A No, sir, they did not.

Q They didn't ask you in precisely the way I put it, but did they ask you that in words or substance?

A No, sir, they did not.

Q No reference at all to when you had your last alleged narcotics transaction with Mr. Intersimone?

A No, sir.

Q After your cross-examination or after my cross-examination, did you have any discussion with any law enforcement official regarding the date upon which you had your last alleged narcotics transaction with Mr. Intersimone?

A After appearing in this court?

Q After I questioned you.

A Yes, sir, I did.

Q And with whom did you have that discussion?

A Mr. Beller.

Q And can you tell us the substance of that discussion?

A [redacted]

A He asked me was I certain, to make sure in my mind whether it was certain it was in 1970 or 1971 and to be sure -- be sure -- that I would be correct in remembering it.

Also, that if I could relate it to anything, to be sure that I would give the correct answer, not a false one.

Q Did any law enforcement official suggest to you that you could relate it to the date of Todd's death?

A No, sir.

Q That was your own recollection?

A Yes, sir, it was.

Q Did any law enforcement official suggest to you, after my cross-examination, that the question of whether the event occurred in 1970 or 1971 was critical?

A Would you repeat that again?

Q Yes.

Did anybody tell you that date was very important?

A No, sir.

Q Did you discuss anything elsewith Mr. Beller on that occasion you just told us about other than the date?

A No, sir, I did not.

Q He didn't tell you it was important?

A No, sir. He told me it was important to remember, to be sure whether it was in '70 or '71.

Q Did he tell you the case might be thrown out if you continued to have doubt about when it occurred?

MR. BELLER: I object, your Honor.

A No, sir, he never did.

Q Did they tell you it was proper to say that you are unsure if in fact you are unsure?

A No, sir.

Q Did they tell you it is proper to say "I don't remember" if in fact you do not remember?

MR. BELLER: Who is "they"?

THE COURT: What is this? I take it this is this conversation you are talkiing about.

MR. KEEGAN: This is the conversation where Mr. Beller said, "It is important. I want you to be sure."

Q Do you remember that conversation?

A Yes.

Q Did any law enforcement official tell you it's proper to say "I don't remember" if in fact you don't remember?

A Yes, I think they did.

Q Who said that?

A Mr. Beller.

Q Did they tell you to say "I don't know" if in fact you don't know?

MR. BELLER: Again who is "they" and when?

MR. KEEGAN: Any law enforcement official.

THE COURT: Is this the same conversation?

MR. KEEGAN: In that same conversation.

Q In that same converstion, did any law enforcement say to you -- I have forgotten what --

A To say I don't know --

THE COURT: That that is a proper answer?

A Yes, I am quite sure someone said that to me.

Q Quite sure. Who was it?

A Mr. Beller.

Q Did Mr. Beller play the tape for you at the time you had this conversation?

A No, sir, he did not.

Q He played for you -- well, did some other law enforcement official play the tape for you at the time of this conversation?

A No, sir, they did not.

Q It was played to you on August 31st after my my cross-examination, was it not?

A You mean after your cross-examination here?

Q After I questioned you for the first time.

A Yes, I think it was.

Q The tape was played to you?

A Yes.

Q Do you understand the meaning of "refresh your recollection"?

A Sometimes I do.

Q And sometimes you don't?

A No.

Q Do you understand that you are supposed to testify here as to what you presently remember? Do you understand that?

MR. BELLER: I object, your Honor.

THE COURT: Sustained.

Q Do you understand, Mr. Brown, that if a document is shown to you and has no meaning for you that you should say "It doesn't refresh my recollection"?

MR. BELLER: Objection.

THE COURT: Sustained.

Q Mr. Brown, there was one time on August 31st that the tape was played for you, is that correct?

A Yes, sir.

Q Were there other occasions prior to yesterday when that tape was played for or by you by any law enforcement official?

A Yes, sir.

Q Who played it?

A Mr. Beller.

Q How many times?

A Once.

Q In addition to the one time you earlier testified to? Did I confuse you?

A No. Only once.

Q Did the playing of that tape make it concrete in your mind that the event in question took place in 1971?

MR. BELLER: Your Honor, I object. We have been over this ten times.

THE COURT: Read the question.

(Question read.)

THE COURT: I will sustain the objection as to form.

Q Did the playing of that tape firm up in your mind that the event in question took place in 1971?

MR. BELLER: I object to "firm up," your Honor.

THE COURT: Sustained.

Q Did the playing of the tape refresh your recollection as to the transaction in question taking place in 1971?

MR. BELLER: I object. He said he had no doubt.

THE COURT: Overruled.

MR. KEEGAN: I object to the statement of the prosecutor.

THE COURT: Overruled.

Q Do you understand, Mr. Brown?

A Would you repeat that last part?

MR. KEEGAN: May I have it read back?

THE COURT: Did the playing of the tape refresh your recollection as to the year?

THE WITNESS: No.

MR. KEEGAN: May I have a moment, your Honor?

(Pause.)

MR. KEEGAN: I have no further questions of Mr. Brown.

Thank you.

THE COURT: Any further recross examination?

MR. RICHMAN: Your Honor, I just want to clear up the question of the stipulation for the record. That is the only question that I have.

THE COURT: Do you have any further questions of the witness?

MR. BELLER: I have one matter I have to take up at the side bar.

MR. RUBINSTEIN: I am sorry, your Honor. I thought Mr. Richman was going to do something. I have a few questions.

THE COURT: Go ahead.

RECROSS EXAMINATION

BY MR. RUBINSTEIN:

Q Good afternoon, Mr. Brown.

A Good afternoon.

Q Have you used, since the trial began, any of the transcripts of the trial to refresh your recollection?

A No, sir, I haven't.

Q Do you know what a transcript is?

A Yes, sir.

Q Do you recall when I questioned you about when you first met J.P. you told us that you refreshed your recollection as to that date?

A No, I don't.

Q Well, do you recall on page -- the bottom of page 2545, were you asked these questions and giving these defendants were acquitted or not. It was none of my business.

Q Mr. Brown, do you recall that Mr. Keegan posed a series of questions to you concerning the sale of four kilograms of heroin to you by the defednant Sebastian Intersimone. If my questions are too involved, just ask me to stop, and I will repeat them.

Do you remember those questions?

A Yes; I do.

Q Now, do you recall, Mr. Brown, on direct examination you testified that you received four kilograms of heroin from the defendant Intersimone in the fall of 1971?

A That's correct.

Q On cross-examination by Mr. Keegan you stated that it could have occurred in 1970. Do you recall that?

A Yes.

MR. KEEGAN: Objection, your Honor. That is not a correct characterization of the question or the answer. I would refer Mr. Beller to the transcript, page 1870.

THE COURT: Will you show me the page you are referring to, please.

MR. KEEGAN: And page 1871, Mr. Beller.

Q Do you recall being asked the question and giving the following answer:

"Q Having read that" -- and that refers to the transcript of the taped interview on May 4th -- "could you now state whether it was 1970 or 1971 that the transaction took place?

"A Truthfully, I can't. I still can't remember whether it was 1970 or 1971."

Do you recall being asked that question and giving that answer?

A Yes; I do.

Q Mr. Brown, I have handed You a copy of Government Exhibit 3505 for identification. That has been referred to as your DEA statement; is that correct?

A Yes, sir.

Q Will you direct your attention, please, to page 74.

Mr. Brown, would you read the first three paragraphs, please, and tell us if that is a substantially accurate account of what you told the Drug Enforcement Administration agents?

MR. KEEGAN: To himself?

A Do you want me to read it to myself?

Q Yes. To yourself.

(Pause.)

Q (Continuing) Have you finished, Mr. Brown?

A I have read the first three paragraphs.

Q The first three paragraphs. Did you tell that to the DEA in the course of your debriefing?

A Yes, sir; I did.

Q Incidentally, in the recess we played portions of the taped interview between you and Mr. Boggs. Did you recognize your voice?

A Yes.

Q And Mr. Boggs' voice?

A Yes; I did.

Q Was that the conversation you had with Mr. Boggs on that date?

A Yes; it was.

MR. BELLER: Your Honor, with respect to Exhibit 3505-K, I would like to offer in evidence the first three paragraphs.

MR. FIGUEROA: Objection.

MR. BELLER: And I would like to come up and show the Court the portions that I wish to offer.

MR. COHN: Can we hear argument on that statement?

THE COURT: Yes. Come to the side bar.

(At the side bar:)

MR. COHN: Your Honor, this I believe is a later consistent statement, not a prior consistent statement. The debriefing was on May 4, 1975, and this was signed on September 13, 1975.

It escapes me how he could rehabilitate what may be a prior inconsistent statement by showing him a statement he made some four or five months later.

MR. BELLER: Well, I will be happy to explain.

THE COURT: Go ahead.

MR. BELLER: Mr. Keegan has argued that as of May 4, 1975, this witness said that the transactions occurred in 1970. Here in court he testified they occurred in 1971. Therefore, something had to have happened between those two times for him to change his mind.

I can establish that on September 13th and possibly before that he was saying during the fall of 1971 he got the four kilos, and he ties that in with the incident of the death of his son in 1972.

Therefore, I want to offer this in evidence.

MR. COHN: It is proper to refresh his recollection with it, if he can. We are still faced with his present lack of recollection, as the question read by Mr. Beller indicates and as your Honor referred to the other day.

It is proper to refresh his recollection from that, but this is a later consistent statement. When he changed his mind is really immaterial, your Honor.

THE COURT: Mr. Beller, why can't you just refresh his recollection?

MR. BELLER: I can, your Honor, but all the jjry knows is that here he says 1971. In May he said 1970. Mr. Keegan claims that before he got to the grand jury somebody got to him, and he said 1971. If there is any inconsistency, we have a right to say that whatever inconsistency there was in his own mind, that is his statement in September 1975.

I am going to argue that there was no inconsistency, because he always referred it to the death of his son.

A later consistent statement would be something after he testified. In May he said 1970, and on the stand, in August or September, he says 1971.

THE COURT: It does seem to me this is admissible under 801(d)(1)(b).

MR. KEEGAN: Your Honor, 801(d) has a whole line of cases which talk about the need of the Government to show that he did not have a motive to falsify when the inconsistent statement was made.

I refer your Honor to Hanger against The United States, 398 Fed. 2d 91. That case hold that the consistent statement can come even after the inconsistent statement, provided the Government shows that the motive under which the first statement was made has been dissipated.

Now, we have argued consistently that he had a motive to lie when he walked in to the FBI in april of 1975, and he still has a motive to lie.

The statement must have been made when he did not have a motive to lie.

I agree with Mr. Cohn that he can refresh his rcollection. I can s how him 3505-K to refresh his recollection, but he cannot offer in evidence page 47 or portions thereof. We would be convicted on statements typed up by some DEA agent and signed by Mr. Brown.

THE COURT: Read by him.

MR. KEEGAN: And initialed by him.

THE COURT: On direct examination he said '71. On cross he said, "I can't say truthfully if it was '70 or '71", and now there is an attack on the year 1971.

Why isn't it permissive for them to show that at an earlier time he was consistent with his direct examination?

MR.KEEGAN: This is jnot an attack on his credibility. All he has to do is memorize it.

MR. BELLER: Now Mr. Keegan says he is not attacking his credibility. It is apparent that his motive was the same throughout.

MR. KEEGAN: Well, you show the motive and then you can offer it.

THE COURT: I will permit it.

MR. BELLER: From the first line --

THE COURT: I assume you are going to ask him what his best recollection is today.

MR. BELLER: I am going to do that after this.

(In open cour:)

MR. BELLER: Your Honor, at this time I would offer in evidence portions of these three paragraphs, and I would like to read them to the jury.

(The portion indicated of Government's Exhibit 3505-K for identification was erceived in evidence.)

MR. COHN: Mr. Beller, would you read the date of these paragraphs?

MR. BELLER: The date of the signing of the document is September 13, 1975.

BY MR. BELLER:

Q I believe you testified, Mr. Brown, that you were interviewed some time from July 22, 1975 thereafter; is that correct?

A Yes, sir.

MR. BELLER: The portion reads as follows:

"During the fall of 1971, BENNY INTERSIMONE gave me a call from upstate . . . BENNY told me on the phone that he wanted to see me. He asked me to come up to Accord. I told him that I didn't want to go up there for some reason and he agreed to come down. He came to the apartment on West End Avenue the next day. He told me that he was taking a chance by coming down, but that since it was me, he didn't mind. He had four kilos of heroin in a bag which he handed to me. He told me that if it had been anyone else but me, he wouldn't have made the trip . . . I gave him what money I had, which amounted to between twenty and twenty-five thousand dollars . . . during the next three weeks, I made at least ten trips upstate. I got off one of the exits on the Thruway to meet BENNY in a gas station to give him his money. . . I saw him up until Todd died in early 1972, and remember that at that time, I had paid him off."

Q Mr. Brown, do you relate in your own mind -- I am sorry.

Are you read?

A Yes.

Q Do you relate in your own mind this four-kilogram transaction with the defendant Intersimone to any events in your life?

A Yes; I do.

Q Tell us what events and how you relate it to those events.

A Just before Todd died, Mr. B used to come to my house frequently to get money from me for the four kilos that I had got from him.

Q When did Todd die?

A In 1972.

Q Yes, but which part of '72?

A January of 1972. Also, during this time, I would make a lot of trips upstate, where he lived, but I would get off at a certain exit and meet him at a gas station at times.

Also during this time Benny wanted to exchange some bag money, meaning money that --

MR. KEEGAN: Objection, your Honor, and move to strike it.

MR. BELLER: He is relating this to an indicent that which he has already testified.

MR. KEEGAN: And on which he was not cross-examined at all by anybody.

THE COURT: This is to fix some period of time.

MR. KEEGAN: Your Honor, that may be the proper reason, but nobody has cross-examined him on the event.

THE COURT: I overrule the objection. Fixing it in time appears to have some relevance.

Go ahead.

Q Go ahead, Mr. Brown.

A He wanted me -- he wanted to know if there was anybody that could exchange this money into good money, to make it look as though that it was legal, because he didn't want any tax problems.

MR. KEEGAN: Your Honor, I move to strike again --- well, withdrawn.

THE COURT: The motion is denied.

Q This is the incident about which you testified on direct examination; is that correct?

A Yes, it is.

Q Who was involved in that transaction?

MRS. ROSNER: Objection, your Honor. He has fixed it as to time.

THE COURT: We haven't gotten to the time yet.

When was this?

Q Mr. Brown, who was involved in that transaction?

MRS. ROSNER: Objection. Can we have a date?

THE COURT: Overruled at this point.

Q Did you proceed with this exchange of money?

A There came a time when I did.

Q And when was that done?

A In March of 1972.

Q And who was involved in that transaction?

MRS. ROSNER: Objection. The purpose was to fix a date. Mr. Beller wants to go into some of the details.

THE COURT: That is already in the record, isn't it, Mr. Beller?

MR. BELLER: Yes.

Q Mr. Brown, is there any doubt, as you sit there, any doubt in your mind as to when this four kilogram transaction occurred?

A No doubt at all.

Q When did it occur?

A In the fall of 1971.

Q Now, you recall that on cross-examination Mr. Keegan showed you wht has been identified asd Government's Exhibit 3505-O-5 for identification, which was a transcript of an interview that you had with Agent Gaffney concerning the defendant Intersimone.

A I don't recall it. Could I see it?

MR. KEEGAN: I am sorry. Could I have the answer reread?

THE COURT: He said he doesn't recall, and he wants to see the transcript.

Q Let me ask you if you recall this testimony, Mr. Brown. This was by Mr. Keegan at page 1870:

"Q Did you ever tell anyone it might have been the fall of 1970 or '71?

"A I don't recall, sir.

"Q I will show you what has been marked as Government's Exhibit 3505-O-5 for identification, and I will direct your attention to page 12 thereof, to a section I have underlined. Will you read that to yourself, please."

Do you recall being asked that?

A Yes; I do now, yes.

Q Mr. Brown, do you recall my directing your attention to page 12 of this exhibit? Do you have that?

A Yes, sir; I have.

Q And this is the interview with Agent Gaffney on May 4, 1975; is that correct?

A Yes; it is.

Q And he asked you when was the --

MR. BELLER: Withdrawn.

Q In that interview you were asked ehen you last did business with the defendant Intersimone.

A Will you repeat that, please?

Q In the interview you were asked by Agent Gaffney, were you not, when was the last time you did business with the defendant Intersimone?

A Yes; I was.

Q And you read that portion of the transcript which begins, "Oh, that's about 1970, 1971, right after my son died. Benny didn't do anything."

MR. KEEGAN: Your Honor, I never read that to the witness. I showed it to him.

THE COURT: You showed it to him. Very good.

Q And do you recall, Mr. Brown, that Mr. Keegan asked you if, having read it, it refreshed your recollection as to whether this transaction could have occurred in 1970.

A Yes. I recall that.

Q And after looking at the interview you said that it could have or that you didn't recall?

A Yes.

Q Now, Mr. Brown, by that time had you listened to the tape prior to Mr. Keegan's ever asking you any questions about the defendant Intersimone? Had you listened to any of these tape recordings?

A No, sir.

Q Have You since listened to the tape?

A No, sir.

Q Mr. Brown, do you recall on one occasion rwturning to the United States Attorney's office?

MR. KEEGAN: I object to the leading, your Honor.

THE COURT: No, overruled.

Go ahead.

Q (Continuing) And listening to a portion of this tape marked 3505-O-5-A --

MR. BELLER: Withdrawn.

MR. KEEGAN: May I ask -- withdrawn. I am sorry.

Q Mr. Brown, I show you what has been marked as Government's Exhibit 3505-O-5-B for identification.

A Yes, sir.

Q That is a box, a tape box; is that right?

A Yes, sir.

Q Will you look on the reverse side, please? Does it bear your initials?

A Yes, sir.

Q Does that refresh your recollection as to whether you listened to a portion of this tape?

A Yes; it does.

MR. KEEGAN: May we have the date of that, Mr. Beller?

Q Did you date your initials?

A Yes, sir.

Q What is the date on the box?

A Eighth month, 31st day -- 31st date, 1976.

MR. KEEGAN: Thank you.

MR. BELLER: Your Honor, at this time I would like to play a portion of the tape.

THE COURT: All right.

MR.BELLER: I have also prepared transcripts for the jury. They are portions of page 12 of Government Exhibit 3505-0-5.

(Pause.)

(Tape was played.)

Q Mr. Brown, is that the conversation you had with Agent Gaffney on May 4, 1975?

A It was.

Q Now you recall that Mr. Keegan also asked you whether --

MR. BELLER: Withdrawn.

We have about ten more minutes, your Honor. Shall I go ahead?

THE COURT: Yes. Why don't you go ahead?

MR. HERWITZ: Could I be excused, your Honor? You remember, I told you about my engagement this afternoon, and I have a conference in that case.

MR. BELLER: It may run a bit longer, actually, your Honor.

THE COURT: If it is going to be a more than that, we will recess at this point.

Ladies and gentlemen, it is almost one o'clock. We will recess until 2.15.

(The jury and the witnesss left the courtroom.)

THE CLERK: Will counsel and the defendants

Q He was involved in narcotics, was he not?

A Yes; he was.

Q Is he alive or dead?

A He's dead.

MR. FIGUEROA: Your Honor, may we have an offer of proof on that?

THE COURT: Is that the end of your line of inquiry?

MR. BELLER: No, your Honor.

THE COURT: All right. Come up.

(At the side bar.)

MR. BELLER: This is the last series of questions that I intend to ask him about the individuals he knows to have been dealing in narcotics, all of whom met rather untimely deaths, and I think it goes directly to the question of his motive for cooperating: his fear of being killed, that it was a legitimate fear, which is very obviously in issue because of the various kinds of defenses that have been raised, particularly that the witness is willing to testify against certain individuals because he may have had problems with them with women, because he held grudges over the death of his son, because he is bizarre, because he is emotionally unstable, because he is mentally ill and so on.

THE COURT: You mean it goes to the state of his mind on the question of paranoia?

MR. COHN: Your Honor, people in the narcotics trade are killed all the time. If you are going to allow a long litany about death in the narcotics trade, it's so prejudicial, if it has any value --

THE COURT: More than one counsel on cross-examination raised the issue that this was an unrealistic fear.

MR. KEEGAN: I move for a mistrial. I asked if people who were informants had been killed. This would be irrelevant. Are they informants who got killed?

MR. BELLER: I don't believe it is relevant, but I will state my position.

I don't believe I have to give my summation every time I want to ask a question --

MR. KRIEGER: Your Honor, may I respectfully renew my application for a severance under Rule 14?

THE COURT: Denied.

MR. BAKE: I move for the same severance also.

THE COURT: That is denied.

(In open court:)

MR. COHN: Your Honor, will an objection be necessary to each question?

THE COURT: Well, we will see what happens. What is the last question?

(Record read.)

BY MR. BELLER:

Q When did he die?

A 1966.

Q How did he die?

A He was murdered.

MR. ANOLIK: Your Honor, I would like an instruction at this point. This is long before the conspiracy allegedly commenced.

MR. BELLER: Could I ask Mr. Anolik not to make his extended objections?

THE COURT: That objection is overruled. That is not thd same area.

MR. KEEGAN: Your Honor, I object to the prejudicial statement about them being murdered. This would be hearsay, in any event.

THE COURT: This is Mr. Brown's state of knowledge.

MR. KEEGAN: May we have an instruction on that point?

MR. BELLER: It is not being offered for other than the witness' state of mind.

MR. KEEGAN: I object, unless he was present.

THE COURT: This is being offered for the state of mind of the witness.

MR. KEEGAN: May we have a limiting instruction?

THE COURT: All right. YOu write one up for me, and I will give it. All right?

Q Mr. Brown, did you know an individual named Pretty Willie?

A Yes; I did.

Q Do you know his true name?

A Yes; I do.

Q What was it?

A Willie Williams.

Q Was he involved in the narcotics trade?

MR. COHN: Same objection.

THE COURT: Overruled.

A Yes.

Q Is he alive or is he dead?

A He's dead.

Q When did he die?

A 1967.

Q How did he die?

A He was murdered.

MRS. ROSNER: Objection. What difference does it make?

3 Q Do you know a man named Virginia Rudy?

A Yes.

Q Was he involved in the narcotics traffic?

A Yes; he was.

Q Is he alive?

A No.

Q When did he die?

A In 1971.

Q How did he die?

A He was murdered.

MR. COHN: Your Honor, may I have a standing objection at this point?

THE COURT: Yes.

Q Do you know a man named Webste5 Paige?

A Yes; I do.

Q You have testified about him in this trial?

A Yes.

Q Is he alive or dead?

A Dead.

Q Was he involved in the narcotics traffic?

A Yes.

Q How did he die?

A He was murdered.

Q Do you know a man named Dynamo Jim?

A Yes.

Q Was he engaged in the narcotics traffic?

A Yes.

Q Is he alive or dead?

A He's dead.

Q When did he die?

A 1971 or '72.

Q How did he die?

A He was murdered.

Q You knew Willie Womack, did you not?

A Yes.

Q He was involved in the narcotics traffic?

A Yes.

Q He is dead, is he not?

A Yes.

Q How did he die?

A He was murdered.

MR. BELLER: I have no further questions.

MR. GOTKIN: I respectfully move for a mistrial.

THE COURT: Denied.

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"I can wait till we've finished" they should have said "What do you mean?"

Here is a man who can't read or write.

THE COURT: But he can understand.

MR. MITCHELL: Our contention is they should have gone into it in more depth than they did.

THE COURT: Mr. Mitchell, I am available to and I am pleased to take testimony if there is going to be some factual issue that has to be resolved.

MR. MITCHELL: The factual issue is what the defendant meant by "Well, I can wait till we've finished."

I will put him under oath here.

THE COURT: Why don't you do that.

MR. SEAR: In terms of the government putting anything in, Mr. Mitchell doesn't believe there is a necessity to go beyond the face of what is on the statement.

MR. MITCHELL: I won't cross-examine Mr. Beller at the moment.

ALBERT LEE JONES, called as a witness, having been duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Mr. Jones, about what time were you arrested?

A 5 o'clock.

Q In the afternoon?

A In the afternoon.

Q Where were you arrested?

A On my job 111th Street and Broadway.

Q And when had you come to work, what time?

A I came to work at 4 o'clock -- excuse me. 11 o'clock and I worked until 5 when they picked me up.

Q At that time they took you to various places?

A They taken me to a place on 54th Street and Tenth Avenue and we got over here around 11 o'clock that night and we stayed up until about 6 the next morning.

Q Then where did they put you at 6?

A Then we went and changed clothes and we were brought down to the magistrate's room.

Q Did you have any sleep from the previous night until they brought you into Mr. Beller's room?

A No, sir.

Q At that time were you tired?

A Very tired.

MR. SEAR: Objection to the leading.

THE COURT: I will allow it. Go ahead.

Q Do you remember them telling you that you could have an attorney if you wanted one? Do you remember this question: "If you do not have funds to retain an attorney an attorney will be appointed to represent you and you do not have to answer any questions before this attorney is appointe and you can consult with him, do you understand that?"

A Yes, I remember that.

Q And you said yes?

A Yes.

Q After you said "Yes," what happened? You were sitting around?

A I was sitting around.

Q At that time did you tell them, Mr. Beller, when you were picked up?

THE COURT: No. Let's not lead. What happened at that time?

Q What happened after that, do you remember?

A Mr. Beller was asking me a few questions and I told him I would like to see my lawyer and I would give him a few answers to the questions he asked me.

MR. BELLER: I will step outside because it looks like he will probably testify.

(Mr. Beller leaves robing room)

Q Did you at any time tell Mr. Beller when you had been arrested?

A Before, yes.

Q What did you tell him?

A I told him what time they picked me up.

Q What did you say to him?

A He asked me what time they picked me up and I told him what time they picked me up.

Q What time?

A It was 5 o'clock in the afternoon. And they brought me down here. The same thing I told you.

Q Did you ask him --

MR. SEAR: Objection to the leading.

Q Did you say anything about a lawyer?

A Yes, I did.

Q What did you say?

A I told him I would like to see my lawyer.

Q Do you remember what he said?

A No, I don't remember what he said.

Q Well, do you remember telling him --

MR. SEAR: Objection.

MR. MITCHELL: I am refreshing his recollection.

THE COURT: He said he doesn't remember. Go ahead.

Q Do you remember after you asked him whether you could call your lawyer him saying, "Yes, you can call and we'll wait"?

A Yes, I do remember him telling me that.

Q Then what happened?

THE COURT: What did you say to that?

Q What did you say to him after that?

A I told him I would like to have my lawyer. He said I can go on telling him whatever I want to tell him or either wait for a lawyer.

THE COURT: Mr. Jones, did you say "I can wait till we've finished"?

THE WITNESS: Yes, I think I did.

Q What did you mean when you said that?

MR. SEAR: Objection.

THE COURT: I will take it. Overruled.

Q What did you mean?

A I mean that I will wait to see my lawyer.

Q What did you mean by "Well, I can wait till we've finished"? Finished with what?

A I thought he was going to take me down to the magistrate's room.

MR. MITCHELL: I have no further questions.

THE COURT: Mr. Sear, you may cross-examine.

MR. MITCHELL: May I ask one other question?

THE COURT: Yes.

BY MR. MITCHELL:

A I told him I want my lawyer.

Q And he kept putting questions to you?

A Yes.

Q When you said, "I want a lawyer," did he say, "No lawyer. I am asking questions"? What did he say?

A I don't remember.

THE COURT: All right. I have no further questions.

MR. MITCHELL: No further questions.

THE COURT: Let's get Mr. Beller in here.

(Mr. Beller enters robing room.)

DANIEL BELLER, being first duly sworn, testified as follows;

THE COURT: Mr. Sear, do you want to inquire a little bit? You know what the focus is. It starts with that one line and goes forward from there.

DIRECT EXAMINATION

BY MR. SEAR:

Q Mr. Beller, on April 22, 1976, were you working in your office in the United States Attorney's office?

A Yes, I was. I could tell you what I did, if you would like to know.

Q You were taking Mr. Jones' statement, right?

A Yes, I was.

THE COURT: During the course of that statement you read him what is on that page, 79 for identification?

THE WITNESS: I don't read the rights. I give the rights. I can tell you exactly how.

Q What happened after you read him the constitutional rights?

MR. MITCHELL: He didn't read it.

A I advised him of his rights, his right to remain silent, his right to an attorney and so on, and at the end of that he said to me -- he asked me a question, which was -- he said that he had been arrested. It says here five o'clock. I don't actually recall when he had been arrested.

Then he asked me if he could call a lawyer. He said, "Could I call a lawyer?" because I wrote down what he asked me.

I said, "Yes, you can, and we'll wait."

Then he said to me, "Well, I can wait till we've finished."

Q And then what happened?

A Then I asked him his name and I proceeded with the question on page 2 of the form and we went through some of that information. Then I believe I skipped over page 3 for the moment and I went directly to what -- well, I went directly to the point of telling him that we had a substantial amount of information.

MR. MITCHELL: That's not in there.

MR. SEAR: It doesn't matter.

A And that we want him to cooperate with the Government in this case.

I then proceeded to ask him some questions. I knew that he had cooperated in the past in other cases. So I told him we were interested in his cooperation, and I started to ask him questions about the facts in the case.

Q Did he answer those questions?

A Yes, he did.

Q After this period of questions and answering, what specifically happened?

A When I finished taking the statement from him, I gave him the form on which I had written his answers to read. He looked at it in a way -- he looked at it in such a way as to make me -- I felt he was embarrassed. My conclusion from what he was doing was that he was unable to read. So I either asked him if he could read or I think I probably said, "Do you want me to read it to you?"

And he said, "Yes."

At that point I read him definitely the portion beginning on page 4 and probably reviewed the whole thing. My best memory is I said, "You recall you came in here and I told you what it was and I told you why you had been arrested and you were going to go to the Magistrate and I advised you of your rights and I took some information and you told me you were Albert Lee Jones and you told me you were known as Al from Norfolk?"

I definite read him page 4 and I guess there is nothing on page 5 and probably reviewed the first three pages.

I then asked him if that's what had heppened and that's what he said. He said it was.

And then I asked him to sign his name on page 4 since there was nothing written on page 5. Then I wrote:

> "Jones cannot read or write. Beller read statement and Jones said correct."

The interview lasted approximately forty minutes.

Q You have told us that after you advised him of his constitutional rights there was a brief exchange as to him stating that he would like to contact a lawyer and you saying that he could wait. Other than that exchange, did Mr. Jones --

A I didn't say he could wait. He didn't say he wanted to contact a lawyer. He said, "Could I contact a lawyer?" and I said, "Yes, and we'll wait."

Other than that exchange by which you have testified, that discussion, at any time during the remaining period of the interview, did Mr. Jones say anything about his getting a lawyer or about a desire to get a lawyer?

A Not that I recall. I would say no.

Q Did he ever state anything to you in substance that he desired that the interview cease?

A No.

Q Did he ever tell you --

A I would say the opposite, actually.

THE COURT: What did he say?

THE WITNESS: He didn't say anything but he was very responsive. It was obvious --

MR. MITCHELL: Objection to "obvious".

THE COURT: Describe what you did.

THE WITNESS: He answered all my questions. I believe when I told him we wanted him to cooperate, he -- I can't say exactly what he said but he knew what I was talking about from his past cases and it was clear to me that he was willing to cooperate with the Government.

Q Do you know how many times he has been arrested before?

A I know of at least two cases, one in 19 -- one at the end of '71, one in the beginning of '72, April, '72, I think, or September '71, and I don't know of any other cases.

Q Was there a discussion about his cooperation in connection with either of those earlier cases?

A Well, as I said, I believe that I told him that I knew that he had cooperated in the past. Whether we went on to discuss that and whether he told me that he had been treated poorly in that case, I don't remember, but there was discussion.

Q Did he ever indicate to you during the period of the interview from start to finish that he didn't understand anything that you were saying?

A No.

Q Did he ever indicate to you that he was extremely tired?

A No.

Q Did he specifically tell you that he had not slept at all the night before?

A No.

Q I may have asked you this, but at any time did he ask you if he was going to go down before the Magistrate soon during the interview?

A No.

MR. SEAR: I have no other questions.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Tell me, Mr. Beller, when you said to him, "You can call and we'll wait," did you say to him, "Here's a telephone. Call your lawyer"?

A I believe I did. The telephone was right on my side.

Q It is not on the sheet, is it?

MR. SEAR: The sheet speaks for itself.

Q And did he at that time ask you to look up a number for him, a lawyer?

A I don't think so. If you would refresh my memory about a name, it might help, but I don't know. I don't believe he did, no.

Q Did you have an agent look up a number?

A No.

Q No discussion about how the fellow spelled his name or anything?

A Which fellow?

Q The lawyer.

A I don't think so, no.

Q Tell me this:

How long an interval occurred between the time when you told him that if he didn't have money the Court could appoint a lawyer and he said, "Yes" and his saying to you that he was picked up at five o'clock?

A You mean he said yes, he understood that?

Q Yes..

A I believe right after I advised him of that he said what I wrote down here.

Q How long an interval occurred after you told him that you would wait and he said, "I can wait till we've finished"?

A One followed directly upon the other.

Q Did you ask him what he meant, his having told you that he will wait, what he meant by "Well, I can wait till we've finished"?

A That's pretty -- no, I didn't ask him.

Q You didn't ask him?

A No. I understand English.

Q That was your interpretation?

A No, those were his words.

Q You interpreted one way, is that right?

A No. I told him that I want to ask him some questions, and before I did that I want to advise him of certain rights that he has. That's the way I begin every interview --

Q I am not talking about every interview.

A Let me finish. That's the way I begin every interview and that is the way I began this interview. I told him he would be taken before a Magistrate and bail would be fixed in this case, and did he understand what a Magistrate was and what bail was.

I then told him I want to ask him a few questions and before I did I want to advise him of certain rights he has under the Constitution and the laws of the United States.

Then I advised him of his rights. He knew the purpose of his interview --

MR. MITCHELL: I object to what he knew.

A I told him the purpose of the interview was I want to ask him some questions. He said he wanted a lawyer. I said we can wait and he said, "Well, I can wait till we've finished."

Q Tell me this:

At any time thereafter was there any discussion of a lawyer during the interview?

A During the interview, no.

Q When?

A I'll tell you what I'm thinking of. Some place in my mind with one of the defendants I do recall somebody calling a lawyer. It might have been -- I think it happened with a different defendant, with Intersimone, but during the interview, no.

Q Tell me:

When you advised him that you had all this evidence against him, you never wrote it down on a sheet that you were advising him of that, did you?

MR. SEAR: Objection.

THE COURT: It speaks for itself.

When you advised him you had all this evidence against him and would he cooperate, what did he say?

A I didn't say we had all this evidence. I told him that we had a good case against him and that we wanted him to cooperate and whether he said okay or whether I proceeded with questions and he answered my questions, I can't recall.

THE COURT: We will continue this during the mid-morning recess. We have been forty minutes at this.

(Continued on next page.)

MRS. SOLLEDER: I have a hearing in Family Court, your Honor, which may take a very short time, but Mr. Richman will cover for me and at the moment I don't plan to cross-examine this witness.

MR. COHN: In terms of my application, your Honor, as to Dr. Greenberg's letter, and further authorization, your Honor, I don't know if you want to deal with it now, but I would like to have the work done in time for me to open to the jury on the defense case. There is some urgency.

THE COURT: Your application is addressed to the Court's discretion in permitting you to --

MR. COHN: Authorizing extensive work and bill CJA for it, that's right.

(Continued on next page.)

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THE COURT: And testify as a witness on your behalf.

MR. COHN: If he finds, if his ultimate findings are favorable to the defense, that's right.

THE COURT: I'll give consideration to that overnight.

MR. SEAR: Two things, your Honor, briefly. First of all I would like to speak to the witness with reference to that thing that arose that we went up to the side bar on at this point.

THE COURT: Yes, I think you ought to be able to give him what Mr. Diller and you and I discussed.

MR. DILLER:No objection.

THE COURT: Mr. Diller said no objection.

MR. SEAR: The second thing has to do with the redirect, your Honor. I have not been talking with the witness at all about the substance of the case as per your direction. Now, I don't know how long the cross is going to be but it would, if I don't have a chance to talk with him at all about redirect, I'm going to have to request a recess or some time to do it, and I'd rather spend some time with him tonight.

THE COURT: I don't see why you shouldn't be permitted to do that.

UNITED STATES OF AMERICA
vs.
JUAN ANTONIO ALVAREZ, et al.

September 17, 1976,
9:45 A.M.

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(In the robing room: Present Mr. Sear, Ms. Cushman, Mr. Cohn.)

THE COURT: I have reviewed the letter of Harvey Roy Greenberg, M.D. I decline to authorize the exploration that you suggested in that I do not see this letter as the basis of any profitable exploration that he would develop that Mr. John Brown could be proven to have a paranoid delusionary motive to lie on the stand, which is what you are saying.

MR. COHN: Yes, that's what I was saying.

THE COURT: As I read this letter it's a very guarded letter of a kind that --

MR. COHN: He had very little material to work from. I think it's responsible in that respect.

THE COURT: And he says that the letter suggests paranoid and delusional trends in its author.

MR. COHN: And cites him.

THE COURT: I will recognize that it is certainly arguable that in the days immediately preceding April 1975

Jack Brown was in rough shape, no question that that's certainly arguable on this. Whether that affects his memory today doesn't seem to me that this kind of a study--

MR. COHN: That's not the argument at all.

THE COURT: Particularly it's arguable the other way that while he may have overstated how people might be going about to get him, although he suggested on the stand that in a couple of answers that he had been told that by somebody in this room, nobody chose to ask him who in this room had told him that or what had been said.

MR. COHN: Some lawyer would have struck us had we had.

THE COURT: Nevertheless someone gets the feeling that, "Jack, we've going to get you and this is how we're going to get you," and I'm not unaware of that.

I'm also aware of Mr. Boggs telling him that he, Boggs, was aware of a $75,000 contract which gives some verisimilitude to the position he had taken.

In any event I just don't, I don't see this letter as the basis.

MR. COHN: I disagree with your Honor's ruling. I must say though, your Honor, you have to consider one thing, that if I wasn't appointed counsel I wouldn't have to ask your permission and you should take that into consideration.

THE COURT: I understand.

MR. COHN: And in fact, the only reason I ask your permission is because a doctor won't do this on speculation. He wants to be assured payment.

THE COURT: Also, I note that Mr. Greenberg makes much of a misspelling.

MR. COHN: He doesn't make much of it. He puts it in as something which is intriguing. He says it is highly speculative indeed in his words, and all he wishes to do, and all he says in that letter is he thinks it's worthy of further investigation as to his state of mind and that is what I'm seeking to explore as a defense lawyer. It might very well be that he would spend a lot of time and come up with nothing, which even I thought was usable, but I think that's the obligation of defense counsel to pursue these things.

THE COURT: So I sort of having the feeling from that last paragraph that Mr. Greenberg is taking possibly questionable Freudian analyses and stretching them beyond all recognition.

MR. COHN: I'm sure you're not placing your expertise above his, your Honor.

THE COURT: I am not, but I have read about Freud and how he is regarded today in some quarters. In any event enough said.

MR. COHN: Very good.

MS. CUSHMAN: May we have it marked as a Court's exhibit?

MR. COHN: Yes, I think we ought to.

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(In open court; jury not present.)

MR. COHN: This is to be marked as a Court's exhibit.

THE COURT: This is the letter from Dr. Greenberg.

(Court's Exhibit 6 received.)

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THE COURT: Gentlemen, the reporters have checked their notes and rather than give you a new page, we are just going to note on the record that at page 3403, an answer that read four or five minutes should, in fact, read forty-five minutes.

MR. BELLER: Your Honor, I have some information about computer printout, Exhibit 124, if now would be a good time.

MR. KEEGAN: We can't hear you.

MR. BELLER: If this is a good time, I am prepared to make a statement about the computer printout.

THE COURT: Yes, that is whether the computer cumulatively added things.

MR. BELLER: I have spoken to Don Engel, the Chief of the Investigative Record Section in Washington, D.C. for the Drug Enforcement Administration. He has been doing that for five years. He explained to me that the entry in the remark section that reads 0974, MS. CUSHMAN: If it is admissible and relevant we will stipulate.

MR. MITCHELL: I think it is admissible and relevant. Otherwise I will get a certified copy of the docket sheet and offer it in evidence as part of my defense.

MS. CUSHMAN: You can do that if it is relevant.

THE COURT: Why don't you discuss that between you?

(In open court)

THE COURT: Any further cross-examination?

Any redirect examination?

MS. CUSHMAN: No, your Honor.

THE COURT: You are excused.

(Witness excused)

MR. SEAR: The government calls Andrew Dolan.

ANDREW J. DOLAN, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEAR:

Q Mr. Dolan, how are you employed?

A I am a New York City detective.

Q How long have you been with the New York City Police Department?

A 20 years.

Q I am directing your attention to April 22, 1976, that is April of this year.

Were you on duty at that day?

A Yes, sir.

Q Directing your attention specifically to 11 A.M. in the morning, where were you at that time?

A In the United States Attorney's office, 1 St. Andrew's Plaza.

Q At approximately 11 o'clock what happened?

A I was directed into a room with a gentleman by the name of Albert Lee Jones, into the United States Attorney's office.

Q That is an Assistant United States Attorney?

A Yes, sir.

Q Was there anyone else besides you and the Assistant and Mr. Jones in that room?

A No, sir.

Q Would you look around the courtroom and tell the court and jury if the Albert Lee Jones present there that day is present in the courtroom?

A Yes, sir.

Q Would you point him out?

MR. MITCHELL: Identify the defendant Jones but

I concede the identification.

THE COURT: Very well.

Q At that time what happened?

A The United States Attorney informed Mr. Jones-- he introduced himself --

MR. MITCHELL: May we approach the bench at this time with regard to this?

THE COURT: All right.

(At the side bar)

MR. MITCHELL: Apparently Mr. Beller took a statement from this defendant which has been redacted in part. This is his statement.

They redacted Don Wilson and properly so.

Now, I have no objection, your Honor, to this proposed redacted statement, if they just ask these questions which they are entitled to ask.

However, my objection is to this, seeing a person two days in a hotel on 112th Street and Broadway and they can leave out the description of the hotel and I would have no objection and I have a specific reason.

The same applies that Brown has talked about people from Washington, D.C.

I have informed Ms. Cushman and Mr. Sear and Mr. Beller that I very much fear for the life of my defendant here. Every time something comes in which in any way could be attributed to him as having cooperated, there is a danger in it to his life.

I say that the danger to his life far outweighs the probative value of showing that somebody was in a hotel on 112th Street or that he talks to people from Washington, D.C.

If those two items are left out I would have no objection to this proposed redacted statement being redacted a little further.

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THE COURT: It seems to me the government loses nothing by taking out the first one. But it seems to me they do with the second one.

MR. BELLER: First of all Mr. Wilson had this for a couple of months and they know what is coming. There is no problem.

Second of all, it shows his knowledge of the person he met in 1969 and 1970 doing the narcotics deal with Brown and it shows his knowledge of Brown's activities.

MR. SEAR: He just talks about this hotel on 112th Street.

MR. BELLER: We don't have any objection to the person I know was here two days ago, I met him in 1969.

MR. MITCHELL: This part he was scared stiff, Judge, and I will be very frank -- may this be off the record?

THE COURT: Let us go off the record.

(Discussion off the record.)

THE COURT: Mr. Mitchell, I don't see why since this Exhibit 79 and 79A I gather has been in the defendant's hands as 3500 material for some time, why it is any more injurious to your client's continued state of health.

MR. MITCHELL: May I go off the record again?

THE COURT: Off the record.

(Discussion off the record.)

MR. BELLER: We will take that line out.

MR. MITCHELL: Thank you very much.

MR. BELLER: I would just say on the record why we are doing it. Possibly, since it is only admissible against Jones, it tends not to show so much of his activities but activities of the Washington people and I think probably they would object under Bruton but it is close and we will consent to remove it.

MR. MITCHELL: I want one thing in that they left out.

THE COURT: You can put that in, can you not, at some later point?

MR. MITCHELL: Yes.

(In open court.)

BY MR. SEAR:

Q By the way, Mr. Dolan, had you been assigned to the United States Attorney's office to work in connection with this case?

A Yes, sir.

Q When were you first assigned, approximately?

A My assignment in the New York Police Department is the organized crime section, narcotics division --

MR. ANOLIK: Objection.

THE COURT: Strike it out.

Q When were you first assigned to United States Attorney's office to work on this case?

MR. COHN: Objection, irrelevant.

THE COURT: If it is a question of relevance I overrule it.

A September, 1975.

Q I believe you started to tell us what happened when you were in the Assistant United States Attorney's office with Mr. Jones.

Could you begin again and tell us exactly what did happen, what was said and so forth?

A The Assistant United States Attorney introduced himself to Mr. Jones and told him he had been arrested for violation of the federal narcotic laws relative to heroin and cocaine.

he told him in a few minutes he will be arraigned in front of the United States Magistrate and asked him if he understood that. Mr. Jones said yes.

Q Then what happened?

A The United States Attorney informed Mr. Jones that he had a constitutional right not to answer any questions and asked him if he understood that and he said yes.

He informed Mr. Jones if he did answer any questions, those questions he did answer, any statement he made, could be possibly used against him in a court of law. He asked Mr. Jones if he understood that and he said yes.

He told him he had a right to an attorney now and at any time and asked him if he understood that and he said yes.

He informed him that if he didn't have any money for an attorney the court would appoint an attorney for him and he didn't have to answer any questions until he consulted with that attorney. He asked Mr. Jones if he understood that and Mr. Jones said yes.

Q What happened at that time?

A Mr. Jones told the United States Attorney that he had been picked up approximately 5 o'clock and asked if he could call an attorney and the United States Attorney said to him "Yes, you can call and we can wait until the attorney arrives."

Mr. Jones said, "Well, I will wait until we are finished."

Q At that point did the Assistant United States Attorney ask Mr. Jones some questions?

A Yes, sir, he did.

Q What generally were the initial questions about?

A His name, where he lived, who he works for, married, single, how old he was, where he was born, et cete

Q Then did the Assistant ask some other questions?

A Yes.

Q What did they concern generally?

A Generally about the case and people that had been arrested and various aspects of the heroin conspiracy that he was involved in.

MR. ANOLIK: Objection, your Honor.

THE COURT: Strike that out.

Q While the Assistant was asking Mr. Jones question was he doing anything?

A The Assistant?

Q Yes.

A Yes, sir,he was writing on a form that he had, on his desk.

Q After he was through.questioning Mr. Jones, what happened, if anything?

A He finished. He was writing on a form and asked Mr. Jones, he says "I would like you to read this and tell me if it is a true and accurate account of what he just said."

Mr. Jones had it in his hands, perused it a few seconds and said, "I don't read so well."

And the United States Attorney said to him, "I will read it for you."

Then the United States Attorney proceeded to read back just what was discussed to Mr. Jones. After he finished he asked Mr. Jones if that is a true and accurate statement as to what we just discussed and he asked Mr. Jones to sign it.

Mr. Jones took out a pen or was handed a pen and signed it.

Q As of that time had you read the statement itself that is what the Assistant United States Attorney had written down?

A No, sir, no.

Q How could you tell that what the Assistant United States Attorney was reading back to Mr. Jones was what was covered on the statement?

A Because that's what we, that's what he had just discussed with the U. S. Attorney, Mr. Jones and the U. S. Attorney.

Q Since that time have you read the statement?

A Yes, sir, I have.

Q Now after Mr. Jones signed the statement what happened?

A The U. S. Attorney --

Q Let me ask you this: Did the U. S. Attorney sign the statement?

A Yes, he did.

Q And did You sign?

A Yes, sir, I did.

Q Approximately how long was this, the entire interview from beginning to end?

A 30, 35 minutes.

Q I show you what's been marked Government's

Exhibit 79 for identification. I ask you to take a look at it and tell the Court and jury what it is if you know?

A Yes, sir, this is the form that the Assistant United States Attorney was writing on when he interviewed Mr. Jones.

Q And that bears Mr. Jones' signature and your signature and the signature of the Assistant United States Attorney, is that correct?

A Yes, sir.

Q I show you Government's Exhibit 79-A for identification and I ask you have you seen that before?

A It's the same as this.

Q I am asking you to compare that to 79 for identification and tell the Court and jury if that's a typed version of 79 itself?

A The typed copy is almost verbatim with this.

Q All right.

MR. SEAR: At this time, your Honor, we would offer Government's Exhibits 79 and 79-A.

MR. ANOLIK: Objection, your Honor.

MR. SEAR: This is offered only against Mr. Jones.

MR. ANOLIK: Your Honor, I object and I'm going to ask for a motion, which I prefer to make at the appropriate time.

THE COURT: At this point I will exclude 79.

I will receive 79-A.

(Government's Exhibit 79-A was received in evidence.)

xx THE COURT: Mr. Anolik, do you still wish a conference?

MR. ANOLIK: Yes, your Honor, I'd like to have a side bar.

(At the side bar.)

MR. SEAR: These exhibits are only offered against Mr. Jones.

THE COURT: Ladies and gentlemen, so there's no misunderstanding about it, this 79-A is being received only against Mr. Jones and may be considered by you only against him.

(At the side bar.)

MR. ANOLIK: Your Honor, as I ujnderstand it that exhibit does refer to Mr. Brown. Mr. Brown is a co-conspirator in this case although he's not a named defendant in this case. This witness has in addition testified to the fact that he's a member or was attached to the Organized Crime Strike Force in connection with this investigation, and that's what he said.

THE COURT: He did not say in connection with this investigation.

MR. ANOLIK: Well, what else could it be?

MR. SEAR: Before being assigned to this case.

MR. ANOLIK: Maybe it's an inference that I drew but it's certainly an inference that I think everybody else can. That's why I objected when I did, and your Honor properly sustained the objetion.

THE COURT: Right.

MR. ANOLIK: What I'm concerned about, your Honor, this comes dangerously close to a Bruton violation, because while it is not technically a statement against my client it is a statement against the main co-conspirator, Brown, which necessarily has to smear my client no matter what happens, your Honor, because of the fact that the infectious nature of Bruton is that you shall not have statements from non-testifying co-defendnats.

I don't know whether or not this gentleman will testify, Mr. Jones. I assume he will not.

THE COURT: This is a statement involving the testifeying co-conspirator.

MR. ANOLIK: It's not a testifying co-

conspirator.

THE COURT: Jack Brown.

MR. ANOLIK: This involves Mr. Jones' making the statement though.

THE COURT: Yes, I know.

MR. ANOLIK: He's not taking the stand as far as I know.

THE COURT: As to him it's an admission against interest. It does not mention your client at all.

MR. ANOLIK: That's true. If this weren't a conspiracy case I wouldn't be concerned about it. I'm merely asking for a motion for severance, your Honor, on the ground that this type of evidence is the type that I don't believe juries can really properly segregate, despite your Honor's correct instructions that they shall consider it only against Mr. Jones. I don't feel they can perform these -- as Justice Hand said mental gymnastics of this sort -- and that's the reason I have to object to it because we've been having this, your Honor, throughout the trial.

This is not the first instance we have had this.

THE COURT: This statement goes no farther than as redacted as you're aware, this statement goes no farther than to say that this man is dealing with Brown.

MR. ANOLIK: It corroborates Brown as having been a dealer. Brown testified against my client. It supports his credibility.

THE COURT: I deny your motion.

MR. MARTIN: Judge, I'd like to make one application here and that is if the Government is going to introduce any more confessions or admissions which are not part of the Rule 16 material even though they're being introduced in the Government's case in chief, at least they can make them available to the defense counsel. I have never seen these before.

MR. ANOLIK: I haven't either.

MR. MARTIN: I've never seen either one of these statements introduced through this witness or the prior witness and the Government is asking they be received in evidence pursuant to Section 3500 or to pretrial discovery rules, particularly Rule 16. I would ask that, I don't want to delay the proceeding, because it's apparent that these statements do not pertain to my client, but I think it's obligatory upon the Government to make those things available at the beginning of the morning session.

MR. SEAR: We certainly will do that. I don't believe there are many more coming in. For the record we showed them to everybody who possibly could have a Bruton problem with them. We didn't intend in any way to keep them secret. I mean other defense counsel have seen them.

MR. ANOLIK: I'm sure you din't.

THE COURT: All right.

MR. SEAR: May I proceed, your Honor?

THE COURT: All right.

(In open court.)

(Government's Exhibit 79 in evidence was read to the jury.)

MR. SEAR: I have no further questions, your Honor.

THE COURT: All right.

MR. MITCHELL: May I read the last page above the signature, please?

MR. SEAR: May we approach the bench, your Honor.

(At the side bar.)

MR. BELLER: This is something that I will make a statement because I handed him the statement and it was clear, at least to me, that he was having trouble reading it. It's not something that he told me. It's my own notes just to remind me why it was that I read him the statement.

The fact is that he can read and write as we've discovered from subsequent investigation. If Mr. Mitchell wants to call me as a witness I'll be happy to testify about it, but this is not part of the statement of Albert Lee Jones.

MR. MITCHELL: It's over his signature.

MR. SEAR: The signature appears on page 4.

MR MITCHELL: No, I mean it's over the signature of Mr. Beller.

THE COURT: I understand.

MR. BELLER: The signature's on the previous page. These are notes that I made to myself to explain so that I would know first of all that Jones did not read the statement or maybe he did, but at least that when he was signing it, it was not after reading the statement, but after I read him the statement, to remind myself why it was that I read the statement which was when I handed him the statement he looked at it in a way that made me believe that perhaps he would be embarrassed by the question of having to read the statement. The fact is that he has an 11th grade education, so it's not accurate. It's hearsay. It has nothing to do with this witness' statement. It's my own comments.

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MR. MITCHELL: It's part of the statement though, Judge.

THE COURT: I'll sustain Mr. Beller's positon.

(In open court.)

MR. MITCHELL: I have no further questions of this witness.

THE COURT: Any other cross-examination?

Mr. Sear, you have nothing further?

MR. SEAR: No.

THE COURT: Very good.

You're excused, sir.

(Witness excused.)

THE COURT: We'll be in recess for lunch until ten minutes after two.

MR. BELLER: Your Honor, before we recess could we approach again just briefly.

(At the side bar.)

MR. BELLER: In view of the Court's rulings and this other problem we don't have any witnesses this afternoon. We have one woman who is in the witness room now. She's a chemist with respect to the Tommy Davis seizure and what I would suggest and request is that we put her on and then adjourn for the day and the jury will be asked to return tomorrow.

J. P. Morgan and his counsel, Mr. Rubinstein, and the Government that Mr. Morgan's address at least between the period of time from 1968 to the present has been 404 High Street, Philadelphia.

MR. RUBINSTEIN: For at least 18 years.

MR. BELLER: At this time, your Honor, the Government will call Phillip Kirschen.

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PHILLIP B. KIRSCHEN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELLER:

MR. BELLER: Could I have this marked as Government's Exhibit 42 for identification.

(Government's Exhibit 42 was marked for identification.)

Q Mr. Kirschen, how are you employed?

A I'm a special agent with the Internal Revenue Service Intelligence Division.

Q And how long have you been with the Internal Revenue Service?

A A little over six years.

Q Now let me direct your attention to the early part of 1975. Where were you working, in which office?

A I was assigned to the post of duty in Newburgh, New York which is within the Albany District.

Q And in connection with your work did you request a check from a bank in the area under your jurisdiction?

A Yes, sir, I did.

Q Which bank was that?

A Bankers Trust in Kingston, New York.

Q And when you received that check did you forward it to the Boston office?

A Yes, sir, I did.

Q And did you give instructions to agents in Boston to do something with that check?

A Yes, sir, I did.

Q What did you tell them to do?

MRS. ROSNER: Objection.

THE COURT: Come to the side bar if you want to press the question.

(At the side bar.)

THE COURT: Mr. Beller, what do you anticipate his answer is going to be?

MR. BELLER: He told him to go to Peter Fiumara and get a copy of the, get the original check which they did and which they forwarded to him.

MRS. ROSNER: Well I object to what they said, but I wouldn't object to testimony that in fact the check was deliverd to him by an agent after a conversation with the agent which it seems to me accomplishes the same purpose.

THE COURT: I see no harm in putting the conversation in. He has a photocopy from the microfilm, that kind of thing?

MR. BELLER: Something like that. He gets one from them. He sends it up to Boston. He tells them go and interview Fiumara and get a check and they sent him back a check.

MRS. ROSNER: I have a further inquiry, your Honor. Is Mr. Beller saying that a revenue subpoena was used to procure this check?

THE COURT: I don't know, but all I know is that the objection at this point is overruled. Let's go forward.

MRS. ROSNER: I have an objection, Judge, because the Internal Revenue Service in the case law under the subpoena power prevents a revenue summons from being used in aid of a criminal investigation, and if that's what was done here I'm going to request a hearing out of the presence of the jury to make that objection and make a record on that.

THE COURT: Whose check is this?

MR. BELLER: Fiumara's check.

THE COURT: What standing does anybody have with Fiumara in this case if any?

MRS. ROSNER: It's the Government theory that this is in fact Frank Moten's money is behind this check. It's my client's funds.

MR. BELLER: Not Frank Moten's money.

THE COURT: The objection is overruled.

(In open court.)

BY MR. BELLER:

Q Sir, what did you tell the agents in Boston to do?

MRS. ROSNER: Objection, that was sustained.

THE COURT: Overruled.

A I requested the agents to contact the maker of the check.

Q What was his name?

A Peter Fiumara.

Q Do you know how to spell that?

A I believe it's spelled F-i-um-a-r-a.

Q Keep your voice up, please.

And so you told him to contact the maker of the check, Peter Fiumara, and?

A Requested they interview him and obtain an affidavit surrounding the facts under which the check was issued.

Q And how about --

MRS. ROSNER: I'm going to adhere to my objection and move to strike the conversation with the agent, your Honor.

THE COURT: I understood this had to do with just getting the original of the check.

Q How about the check?

MRS. ROSNER: I have an objection and a motion to strike.

THE COURT: I overrule that objection but let's get down to what we discussed earlier, all right.

Q Did you give them instructions as to the check?

A Yes, sir. I asked that they present the check to the individual for identification and if possible obtain a copy of the original.

Q Now thereafter did you receive a copy of the original from these agents in Boston?

A Yes, sir, I did.

Q And did you compare that with the check that you had secured from Bankers Trust in Kingston?

A Yes, sir, I did.

Q I show you what's been marked as Government's Exhibit 42 for identification.

Can you identify that check? Can you identify that exhibit?

A Yes, sir, I can.

Q What is it?

A This is a copy of the check that the agents in Boston sent me.

MR. BELLER: Your Honor, at this time the Government offers Exhibit 42.

MRS. ROSNER: If I can look at it, Mr. Beller.

No objection.

THE COURT: It will be received.

(Government's Exhibit 42 was received in evidence.)

x MR. GOTKIN: Is this against everyone, Judge?

THE COURT: I assume so.

MR. BELLER: Anybody else want to look at it?

MR. OFFER: Oh, yes.

MR. GOTKIN: Yes.

(Government's Exhibit 42 in evidence was read to jury.)

THE COURT: Any further questions?

MR. BELLER: No, your Honor.

THE COURT: Any cross-examination?

MR. KEEGAN: Your Honor, can we come to the side bar?

THE COURT: You feel it's needed?

MR. KEEGAN: Yes, your Honor.

(At the side bar.)

MR. KEEGAN: Your Honor, I didn't interpose an objection to the introduction of the check. Mr. Beller had asked me to stipulate to the admissibility of the check, business records rather than call Mr. Fiumara. I want to make my position clear. Those objections interposed to the induction of testimony by Jack Brown regarding this transaction as not being relevant to the case on trial. I want to preserve that objection to the relevance of this evidence.

I have no objection to the introduction, the business record foundation.

THE COURT: I see. All right.

MR. KEEGAN: I have another request your Honor. I understand that a statement was taken by this witness from Mr. Intersimone and I'd like to see that statement. It's never been provided to me and I'd like to see it. This is indeed part of the conspiracy I'm entitled to these statements of my client made in connection with the investigation.

THE COURT: Isn't the defendant entitled to statements made in connection with the investigation under Rule 16, Mr. Beller?

MR. BELLER: I don't know if there are any in this particular instance but I'll check upstairs.

MRS. ROSNER: Do you have any 3500 for this witness?

MR. BELLER: No.

MRS. ROSNER: What's his name?

MR. BELLER: Kirschen.

(In open court.)

THE COURT: We're going to take a recess at this point.

(Jury left courtroom.)

(Witness leaves courtroom.)

THE COURT: Apparently one of the jurors is ill.

Now, Mr. Sear, you want to urge some law upon me in regard to Rybacki and that problem.

MR. SEAR: Your Honor, yes. I would specifically refer your Honor to a case which is referred to in

PETER J. FIUMARA, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELLER:

Q Be seated, please.

Would you state your full name, please?

A Peter J. Fiumara.

Q Mr. Fiumara, I show you what's been marked as Government's Exhibit 42 in evidence. Will you take the exhibit, please?

A I plead the Fifth Amendment on the grounds it may tend to incriminate me.

MR. GOTKIN: Your Honor, we can't hear the witness.

THE COURT: Mr. Fiumara, take the exhibit. You have no privilege to avoid putting that piece of paper in your hand.

THE WITNESS: I plead the Fifth Amendment.

Q I didn't ask you a question yet.

THE COURT: Just take the exhibit and look at the exhibit.

Q Now, Mr. Fiumara, I show you what's been marked as Government's Exhibit 42 in evidence.

Have you seen that that's Government's Exhibit 42 in evidence?

A I take the Fifth Amendment on the grounds it might tend to incriminate me.

Q Could you speak up a little bit so that everybody can hear you?

A Take the Fifth Amendment on the grounds it might tend to incriminate me.

Q You intend to invoke your constitutional privilege with respect to all the questions that I intend to ask you?

A That's right, sir.

Q About that check.

MR. BELLER: Your Honor, at this time the Government would make application for an order of immunity for the witness. I'm handing up an application with authorization from the Attorney General to do so. The application is signed by Mr. Fiske and a copy of the order requesting immunity is attached.

THE COURT: Mr. Beller, without my reviewing it I take it you represent to me that the statutory procedures have been followed?

MR. BELLER: Your Honor, yes. We made application yesterday to the Attorney General for immunity.

The authorization to make application to the Court as prescribed by statute was Telexed. A copy of the Telex is attached to the papers, and the witness has invoked his privilege, and it's the Government's view it's in the public interest that he be granted immunity for the limited purpose of his testimony here.

Your Honor, I hand a copy of the order to the clerk and ask that this copy be handed to the witness.

THE COURT: Mr. Beller, is there any reason Mr. Fiumara's counsel can't come up and look at this?

You, sir, are counsel, are you not?

MR. POLCARI: I was going to suggest, your Honor, if I may be permitted to read it.

THE COURT: I was going to say would you come up and have a look at this right now.

MR. POLCARI: May I make an inquiry, your Honor?

THE COURT: Sure.

MR. POLCARI: As to whether or not this immunity does apply to any possible State prosecution in any way related to the cases now being heard and tried and in which the witness is now being called for to testify? It does not so state it in this order. I raise the question.

THE COURT: Mr. Beller, I assume this is a use immunity.

MR. BELLER: You know whatever the law is I'm sure Mr. Polcari is familiar with it. Under the law a witness who is granted immunity under the provisions of Title 18, United States Code, Section 6000, one is compelled, has no constitutional privilege based on the Fifth Amendment. Now whatever the scope of the order is the scope of the order.

MR. POLCARI: Your Honor, I'd like to know what the scope of the order is.

MR. BELLER: That's why there are cases decided on these things and there are law books that contain all the answers to those questions, but under Kastagar versus United States a witness who is granted immunity under the provisions of the new immunity sttatute has no constitutional privileged based on the Fifth Amendment entitling him to refuse to answer questions.

MR. POLCARI: Well, he still hasn't answered the question, your Honor, of the involvement by State sovereignty.

THE COURT: Well can anybody give me any input on that?

MR. COHN: Your Honor, I think all of us

hesitate to advise.

THE COURT: I don't request any advice. I request a citation.

MR. BELLER: Your Honor, I'll give you a citatior which is Kastagar versus United States, I think it's 400, or 401 U.S., I'm not sure, and the law states that the rule of the Supreme Court in Kastagar is that the immunity statute covers the entire gamut of the Fifth Amendment privilege against testifying in court and that where immunity is conferred under the statute the witness has no privilege.

Now if Mr. Polcari is interested in the scope of the order as an academic matter then you know he can research the law. He can look at Murphy versus Waterfront and decide from there exactly what the scope of the privilege is, but the Supreme Court has stated that a witness who comes into Federal Court and is given immunity under the statute is compelled to testify under the grant of immunity where his claim is a Fifth Amendment claim.

THE COURT: All right.

MR. POLCARI: Your Honor, he still hasn't answered the question. He's trying to put the burden --

THE COURT: He's answered the question to my satisfaction. I'm satisfied that he's given the scope of this order in this proceeding. The witness must testify.

MR. POLCARI: Are you in effect stating, your Honor, please, if I may say so, that there is no assurance to the Court's knowledge or the United States Attorney's office that this immunity applies to any possible State prosecution?

THE COURT: I'm not prepared to give you a ruling on the State applicability of this but I am comfortable in my own mind that this immunity having been conferred here that he would be in contempt of Court if after direction of Court there is a refusal to answer.

MR. POLCARI: All right. May your Honor note my exception to the order.

THE COURT: Yes, I will note it.

MR. POLCARI: You can answer the question.

THE COURT: Mr. Beller, do you want to inquire briefly here and see what posture we're in and then I'll bring in the jury.

MR. BELLER: Fine.

BY MR. BELLER:

Q Mr. Fiumara, I now show you Government's Exhibit 42. It's already been received in evidence. Do you recognize that check?

A Yes, I do.

Q Is it your intention after having immunity conferred upon you to answer questions that are posed to you in this court?

A I will answer the question.

MR. BELLER: Perhaps we could proceed with the jury then, your Honor.

THE COURT: Fine. Bring them back.

(Jury in box.)

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PETER J. FIUMARA, called as a witness by the Government, being first duly sworn, testiffied as follows:

DIRECT EXAMINATION

BY MR. BELLER:

Q Mr. Fiumara, is that right?

A That's right, sir.

Q Could you keep your voice up so that everybody can hear your testimony.

Mr. Fiumara, I show you what has been marked as Government's Exhibit 42 in evidence. Will you please take a look at that exhibit.

Have you looked at it?

A Yes, I have.

Q It's a check, isn't it?

A Yes, it is.

Q You write that check?

A Yes, I did.

Q When did you write the check?

A I wrote the check April 12 of 1972.

Q It's written to Sebastian Intersimone, is that right?

A Yes, sir, that is.

Q Did you ever meet Sebastian Intersimone?

A No, I haven't.

Q Who instructed you to write that check?

MRS. ROSNER: Objection to form.

THE COURT: Yes. I'll sustain the form.

Q Did you receive instructions from an individual to write that check?

A Yes, I have.

Q What's his name?

A Frank Moten.

Q When Mr. Moten instructed you to write the check did he mention the name of another man who was involved in that transaction?

A I don't know if the man was involved. He had mentioned a name.

Q What was the name?

A James --

MRS. ROSNER: Object. He cut the witness off.

MR. BELLER: I did not, your Honor.

THE COURT: No, overruled.

Q What was the name?

A James Richardson.

MR. BELLER: No further questions, your Honor.

May we just approach briefly.

(At the side bar.)

MR. BELLER: I've got an affidavit of two or three pages which is the 3500 material for this witness which I have to hand out and perhaps I can do it here.

MRS. ROSNER: I don't know why it couldn't be done before the jury came in.

MR. BELLER: Because I forgot.

THE COURT: All right. Let's do it now.

MRS. ROSNER: Could he bring it over to the side bar?

THE COURT: Yes.

MRS. ROSNER: Could we take a minute while I read this?

THE COURT: Sure.

MRS. ROSNER: All right.

(In open court.)

CROSS EXAMINATION

BY MRS. ROSNER:

Q Good morning, Mr. Fiumara.

A Good morning.

Q That Exhibit No. 42 in evidence is a check drawn on the account of a business, is that correct?

A That's correct.

Q What is the name of that business?

A Brunswick Finance Corp., C-o-r-p.

Q What is the nature of that business?

A To make loans.

Q Loans to whom?

A To anyone.

Q In other words, it's a company something like maybe Beneficial Finance?

A Well, not in that big scale but on that idea.

Q Small Beneficial Finance?

A Yes.

Q And do you have an official position with that company?

A Yes, I have.

Q What is your position?

A President and treasurer.

Q How long have you held that position?

A Since its infancy, about 17 years.

Q And do you have authority within that business to issue loans to people?

A Yes, I have.

Q Was this check the advancement of a sum of money which was a loan?

A This was a loan in regards to, that I received, I didn't receive, but Mr. Moten had gold coins as collateral for this loan.

Q Now let me go back a step. This loan was not made to Frank Moten, was it?

A No, it wasn't.

Q It was made to an individual Sebastian Intersimone?

A Sebastian Intersimone.

Q Whom you were not acquainted with?

A I never met him.

Q Did Mr. Moten indicate anything to you about whether the man was responsible or could be expected to repay the loan?

MR. BELLER: Objection.

THE COURT: No. Overruled.

Q Well let me withdraw that question.

Was this loan secured in any form? Did you receive collateral for it?

A $20,000 worth of gold coins.

Q Did Mr. Moten explain to you what Mr. Richardson relationship was to this transaction?

A He told me that Richardson had put up the collateral for this loan.

Q Mr. Mr. Intersimone to receive this money?

A To Sebastian, for Sebastian Intersimone.

MRS. ROSNER: No other questions, your Honor.

THE COURT: Any other cross-examination?

MR. KEEGAN: May I ask it from here, your Honor?

THE COURT: You may.

CROSS EXAMINATION

BY MR. KEEGAN:

Q Was anybody else present, Mr. Fiumara, when you discussed this loan with Frank Moten?

A No, there wasn't.

MR. KEEGAN: Thank you.

No further questions.

THE COURT: Any other cross-examination?

Any redirect?

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they know who helped them, they know whom they sold it to. And that's what they have to do for the government. That's their self-interest: Tell the truth, tell what you know and you serve your own self-interest and it was that truth the government submits, and you may find, that brought
b2 these defendants into this courtroom.

Now I am going to try and respond to some of the lawyers' arguments in this case and I want to explain to you a little bit how I have tried to organize the summation and very frankly I found it very difficult. I wasn't up all night last night eating peanuts watching television.

All of the lawyers have touched on pieces of evidence that they believe relate to their clients and they try and distinguish something, they tell such and such couldn't have happened, why didn't such and such happen, they take a certain document and tell you this particular document doesn't mean anything. Some of them read lines from cross-examination and paragraphs from direct and skip around and so on, and I think what I started out with is a very good illustration of that.

These are arguments that are particular to a given defendant. They just concern one particular person.

Then there are general credibility arguments,

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sophisticated kinds of arguments like the witness is an out and out liar, the witnesses have been brainwashed, what you have been watching here is the Manchurian Candidate. Argument of that type. And those arguments apply to all of the defendants. Almost all of the defense attorneys made varieties of that argument. They had to because they had to come up with the theory that deals with the reality, the reality of this case, and that is that six witnesses, six inside witnesses came here and said the relationship between these defendants is a relationship based on trafficking in narcotics.

Now, they say well, this piece of evidence is just as consistent with friendship as anything else, this document shows that they knew each other, it just means it's a part of an extended family or something like that. Are they dreaming? Are they trying to put something over on you? These witnesses didn't come in here and talk about extended family relationships. The government's witnesses didn't do that. The defense witnesses didn't do that.

The testimony in this case is that these defendants were in the drug business together. That's what the record says. And these lawyers know that there has got to be something before you, a theory that explains that testimony, that explains why six witnesses would come in and testify that the relationships between these defendants were based on trafficking in drugs, not buying and selling old clothes.

So there are claims about evidence and claims about credibility and I am going to try and talk about both of them.

In my view, the credibility claims are really the most important because they are essentially, they have to be made, there has to be something that meets the argument how is it that all these witnesses are testifying to basically the same thing. I have discussed them a little but but I am going to discuss those arguments at considerable length later on. I also want to discuss some of the evidence arguments, the particular arguments made and I am going to do that first.

I will probably mention each of the defendants but I am not going to discuss everything, I am not going to go over what I did for about eight hours over three days the first time. The testimony is in the record. You have had enough summation about all the facts and your memory of the testimony will control. And really what's more, I just can't argue about every single point that has been made over the last seven days. It

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would just be impossible. But I'm going to try and pick out some particular arguments that were made. Maybe some of the arguments that the defense attotneys considered the strongest arguments --

MR. COHN: Objection. No evidence.

MR. BELLER: Correct. I don't know anything what is in any defense attorney's mind and that goes both ways. So maybe what I mean is I'm going to argue what I consider to be the weakest arguments that they made.

But when I do that, when I discuss this portion of the evidence, evidentiary arguments that have been made, I don't want you to think for a moment that the proper way that the government thinks the proper way for you to consider this case to evaluate the evidence is to look at it piecemeal, to consider direct examination and not to consider cross-examination, to take out a little bit over here and disregard this, take one piece of corroborative evidence and disregard everything else. That's not the way to look at this case.

Let me give you an example why. Take the testimony of Luis Sureda. Now, as I remember the summation, which is not in evidence, none of these defense attorneys commented on Sureda's testimony until we got to the Florida defendants, until we got to Mr. Black. And perhaps it may be and I'm not trying to go into their mind, but it's argument, perhaps it may be that they don't believe that Sureda's testimony relates to them. But it does, and in a very damning, damaging way. Jack Brown said that Luis Sureda was a courier of cocaine for Tony Alvarez and Angelo Rodriguez. Luis Sureda testified that he was a courier of cocaine for Tony Alvarez and Angelo Rodriguez. Was Brown hallucinating with respect to Luis Sureda,as they say Brown was about all of their clients?

Don't forget that Sureda is in this case the same way they are in this case.

Was Brown brainwashed by some flatfoot copy about Luis Sureda?

Did the government lawyers harass Brown into giving information about Luis Sureda?

Did Brown falsely testify about Luis Sureda?

Did Brown get prepared by government lawyers for 48 days to give evidence, false evidence about Luis Sureda as they say he was about their clients?

Was Brown so crazy that you couldn't believe anything that he said about Luis Sureda?

No.

The same is true for Michael Parker. Was Brown brainwashed into giving information about Michael

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Parker, that Michael Parker says is true?

Was he brainwashed, was he harassed, was he coached, was he suborned to give information about Anne

b3 Reynolds that was false?

She got up and said what he says is true.

Now, you heard all of these kinds of arguments made by defense counsel about the witnesses' reasons for testifying falsely against their clients. But, if Sureda had been on trial, if he had decided to go through with his plea of not guilty and to go to trial, he would have had a lawyer here and his lawyer would have gotten up and made the same arguments --

MRS. ROSNER: I object, your Honor. I object.

THE COURT: I sustain that.

MR. BELLER: Just a matter of argument, if Sureda--

MRS. ROSNER: I object.

THE COURT: I sustain that, Mr. Beller.

MR. BELLER: Well, you know things about Luis Sureda because he testified about it. You know he was a drug dealer. You know things about Michael Parker because he told you about it. You know that he was a drug dealer. You know things about Anne Reynolds. You know that she was a drug dealer. You know it because there were witnesses here and they've told you about it and you know that the information that Jack Brown gave about them, those three people who were in this indictment, who were defendant in this case was true.

What would you say to an argument about them that they weren't drug dealers?

MR. MITCHELL: Objection, your Honor.

THE COURT: Overruled.

MR. BELLER: Would you be convinced by that kind of argument if they came in here knowing the things -- that you know about them? If somebody got up and said, "Not me", what would you say to that?

Take the testimony of Anne Reynolds. The only lawyer who spoke about her testimony was Mr. Reid. Maybe they think it only affects Lois Sampson. Well, they're wrong.

MRS. ROSNER: Objection to what they think. The states of mind are not in evidence. Could he argue the evidence.

MR. BLACK: Your Honor, he promised not to go outside the record.

THE COURT: Come to the side bar, please.

(At the side bar)

THE COURT: Mr. Beller, I would suggest this, there hasn't been an objection up to now about your use of the word "they" in certain circumstances, but it seems to me it fits, but where you get into an Anne Reynolds situation and when you say "they", "they argue", you're going beyond what the record supports.

MR. BELLER: All I said was the opposite, your Honor, nobody mentioned her, only Mr. Reid mentioned her

MR. ANOLIK: Some people have no reason to mention her.

MR. BELLER: That's exactly right

THE COURT: That may be, but what I am suggesting to you is the use of the word "they", or "these lawyers", en masse do it that way.

MR. HERWITZ: Your Honor, may I be heard.

THE COURT: Yes.

MR. HERWITZ: When we were discussing our summations, your Honor suggested that defense counsel try not to be repetitive, and that if one counsel had dealt with a subject, you weren't directing us not to but you did indicate and we all agreed that if we could avoid being repetitive, we would. Now, obviously, your Honor, it would have been the height of foolishness for me to discuss Sureda, Anne Reynolds, Marsha Ladd, who gave no direct testimony against my client, and with respect to whom or

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other counsel, as to whom they did give direct--

THE COURT: I think I will excuse the jury for the recess.

(In open court)

THE COURT: Ladies and gentlemen, we will take our mid-afternoon recess.

(Recess. Jury left)

(At the side bar continued)

MR. HERWITZ: Now to have an argument by the government that somehow we didn't go in to these people and we should have discussed them and the fact that we didn't discuss these people creates an unfavorable inference against them and I respectfully submit that under the circumstances, that's an unfair argument. Now, I'm perfectly willing to start my summation over again and go in to Marsha Ladd. She is a fertile field for declamation but that would have been repetitive, your Honor.

THE COURT: Mr. Beller's problem, which I appreciate, and your problem which I appreciate--

MRS. ROSNER: Could we do it in open court, your Honor? I can't hear what's going on.

(In open court)

THE COURT: I was commenting to Mr. Herwitz, Mr. Beller's problem which I appreciate is that virtually everybody attacked Jack Brown.

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MR. MITCHELL: No, your Honor.

THE COURT: Virtually everybody. Perhaps there is an exception. Well, inferentially I believe you attacked Jack Brown, whether by name, but he was the author of the evidence against your client and, therefore, was attacked by you as being inadequate.

In any event, virtually everybody. Mr. Beller has the problem at this point. In the time reasonably allocated to him to cover a lot of things that have been said, that is. Some may have been said by 20 counsel, some only by 3. I appreciate the problem that he faces, I appreciate those of you who are here saying, "I didn't make this argument and therefore I do not wish to be included in the word 'they'."

I appreciate their position. It seems to me the matter is fairly easily resolved by government counsel perhaps being more pointed in focusing of responses and a certain avoidance of the broader brush approach. I've been listening to the argument thus far and up until this point there had been really no objection, no objection had been voiced by anybody except early on, and from that point on I heard no objection to the description what was or was not various people's positions and I thought that there was essentially no basis for it. As we get into

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a discussion of the Anne Reynolds testimony, it may well be that it is appropriate for the government to be more focused in its response to the Anne Reynolds question, if I can refer to it that way. All I want to suggest is that Mr.Beller might perhaps go through your notes in the next 15 minutes and we are in recess here and see if you can meet some of that which I think would obviate any possible question here we might have.

Mr. Herwitz.

MR. HERWITZ: If your Honor please, going further into the point I made, in view of the fact that we did have a discussion about co-counsel not repeating what others said unnecessarily, you didn't restrict us but I think you hoped that we could in that regard, and now that Mr. Beller has not just in passing but repeatedly made the argument that many of us did not mention Sureda or Marsha Ladd, which I didn't --

THE COURT: I thought he specifically pointed out that Sureda did not get mentioned until--

MR.HERWITZ: Yes, but he is indicating and is saying that in our failing to mention these people, as though they didn't apply to these people, and I think respectfully, your Honor, that your Honor ought to acquaint the jury with the fact there were discussions with counsel

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relative to summation and while there was no limiting instruction, you did express the hope that where possible, there would not be repetition and that counsel would not go into matters that other counsel were taking care of and that Mr. Beller would not continue to make that kind of argument without acquainting the jury with what the facts were.

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MR. BELLER: I object to that, your Honor. Mrs. Rosner went up first and spoke about Brown, she spoke about Parker, and about Marsha Ladd. Anybody else who had anything to say about those three witnesses got up, either they added their two bits or said Mrs. Rosner said it better than I can, and I am going to adopt her comments. Mr. Herwitz, if he had anything he wanted to say about Sureda, he wasn't going to wait without even hearing anything that Mr. Black said, and I object to that kind of instruction. Mrs. Rosner took care of everybody, and everybody else added it or adopted their remarks. They said it specifically on the record.

MR. HERWITZ: I didn't.

MRS. ROSNER: Your Honor, I think the problem with Mr. Beller's argument is this: First of all, defense counsel in an effort to avoid repetition did try to join its others' arguments so not to belabor argumetn before

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the jury, and should not be penalized of having been sucked down the road doing that.

Number 2, a conspiracy contains several elements. First, the existence of the conspiracy has to be established Mr. Beller is quite correct that in making the determination that a conspiracy exists, all of the evidence is relevant. However, a defendant need not defend himself only on the ground that no conspiracy exists. A defendant can defendant himself on the ground that he did not participate and many people have so chosen to do and had been stigmatized and ridiculed unfairly by the government for taking that approach.

The point is, your Honor, that a defense counsel is not overlooking the legal impact of testimony by not commenting on the credibility of every co-conspirator's witness' testimony because a defense may be a conspiracy exists but that his client did not participate, but we are joined 22 strong by the form of this indictment, and no lawyer wishing to injure anybody in this courtroom can say yes, a conspiracy exists but my client was not in it and we have been prejudiced by the government's line of arguments that we have not attacked every witness, that we had individually stood up and said that my client did not participate, which we were wholly entitled under the law to do because individual participation is required. And, I ask the court to instruct the jury that because of the nature of the allegations each and every defendant is entitled to defend on the theory that he did not participate and does not need to attack, confront or disprove to the jury the testimony of any witness taking the stand. I think the government's argument is entirely unfair in its approach and particularly in characterizing the state of mind of defense counsel en masse, and in riding in by way of hypothetical what would be done if the co-conspirator witnesses are on trial. The government unfairly --

THE COURT: I sustained your objection to that.

MRS. ROSNER: Mr. Beller then did around the corner what he couldn't do directly by arguing the co-conspirator witnesses had pled guilty and those pleas of guilty were admitted only because of their bearing on credibility because they represent felony convictions. As each of those pleas of guilty came in to evidence, the jury was instructed as to their limited use, that the plea of guilty is not evidence against any other person on trial and after your Honor sustained--

THE COURT: Mrs. Rosner, please.

MRS. ROSNER: It is a serious matter, Judge and--

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THE COURT: Can I get a word in edgewise?

MRS. ROSNER: Yes.

THE COURT: The essence of Mr. Beller's argument was that they acknowledged the facts of their participation which established their guilt.

MRS. ROSNER: He didn't just say that.

THE COURT: He did say that.

MRS. ROSNER: He didn't just say that. He is entitled to argue--

THE COURT: This jury is an adult jury and they appreciate the fact if somebody is charged with a crime and comes in here and says I have committed the acts of the crime, that is a statement of guilt. It seems to me it's of little consequence to say also that statement is made as a legal matter before this court. I don't see any basis for your distress in that regard.

MR. HERWITZ: Your Honor, could I get a ruling on my application?

THE COURT: Your application, Mr. Herwitz is?

MR. HERWITZ: My application really is that in light of what Mr. Beller has said about my, for example, failure to comment on various witnesses who didn't directly testify against my client, that some invidious conclusion should be derived from that and I think in fairness that

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the jury should be advised that we were asked by the court, if possible, without prejudicing our rights not to be repetitive, your Honor.

THE COURT: I will phrase that exactly as I mean it, no further or less, that I feel my observations, and in the charge, counsel have been observing the time of all of us in unnecessary repetition which is appreciated by the court and I'm sure by the jury. Now I would couple that with a suggestion to the government at this point that it not make observations that a defendant should have attacked a particular witness that does not logically bear upon that person. Mr. Beller, I must say, I can see New Jersey defendants not paying the slightest concern whatsoever to Luis Sureda and therefore given the posture of this case, to infer a fatal omission of that fact does not necessarily flow. It seems to me in the "brief rebuttal" that is allocated to you and, as I say, ten minutes a witness is almost four --

MR. BELLER: I'm finished with this section, your Honor, but I just wanted to point out what I said.

MRS. ROSNER: Your Honor, may I very briefly summarize my contention.

THE COURT: I thought you had made it.

MRS. ROSNER: I have not, your Honor. I think it is a very serious point. We are not, because of the possibility of inconsistent defenses, we cannot each stand up and say, I think the conspiracy exists but I can show you that my client did not participate, which is a perfectly legal defense. We can't stand up and say that because some other counsel does not wish to concede the existence of the conspiracy. We are constrained by being joined together to avoid making that position. The Government has unfairly commented on that by pointing to us all as if we were idiots and saying, they stand before you and say he's telling the truth but not as to my client.

The Government has attacked us in an incredibly unfair way in an attempt to put forward a perfectly legitimate defense of non-participation by an individual defendant, an argument that we have made in an effort to respect other counsels' rights not to acknowledge the existence of the conspiracy.

THE COURT: I think unless I miss my guess that at least 20 out of 22 lawyers said that about Jack Brown, and that's where the main thrust of Mr. Beller's argument has been.

MRS. ROSNER: My point is, Judge --

THE COURT: And I feel it justified.

MRS. ROSNER: Judge, I could have stood up in summation and said, yes, a conspiracy existed and believe this man, this, this man, this man were guilty, but I believe I can show you my client wasn't. I couldn't do that because I'm joined with 21 other people. But the Government has unfairly characterized that approach as one ignoring reality, ignoring the reality of the existence of a conspiracy when it wasn't ignoring reality. It was having a gag over our mouths because we're joined together with 21 other people whom we cannot prejudice by saying what we truly think about the guilt or innocence of some other man. And I think it's entirely unfair.

THE COURT: You're saying you would have made that argument if you were tried alone.

MRS. ROSNER: If I'm on trial alone and no other man here could be injured by it I wouldn't have to protect anyone else. I could admit the existence of a conspiracy and contend that my client didn't participate. I didn't do that because of the form of the indictment and the Government cannot have it both ways. They can't join us together and then penalize us for it.

MR. COHN: You know, Judge, that I was put in exactly that position in the conflict between Lois Sampson and Joseph Sampson.

THE COURT: I don't want to hear from you.

MRS. ROSNER: Judge, that's the problem.

THE COURT: I'm listening to Mrs. Rosner.

MRS. ROSNER: To compound it, that's the problem. Mr. Beller has the nerve to speak about defendants' counsels' strategy to put in mind what the defense lawyer is thinking and planning his defense that he's got to come up with something that fits reality. Wholly inappropriate in light of his own statements that lawyers' states of mind are not relevant here.

THE COURT: All right. We'll take the last five minutes of the recess.

(Recess.)

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(In open court; jury not present.)

MR. BAKER: Your Honor, would you give a curative instruction to the jury.

MR. BELLER: I object to any comments based on Mrs. Rosner's objection in the middle of my summation. I object to taking a recess for 35 minutes in the middle of a summation and so on.

The same argument is made in every single case. I just read the Tramunti summation last night. Mrs. Rosner made the exact same argument, inconsistent defense is denied. Nobody in this case could have ever argued --

THE COURT: I'm not dealing with that at all. I'm dealing with the misconception might arise from the use of the word, they", and I'm going to very briefly deal with that. I denied Mrs. Rosner's other position.

(Jury present.)

THE COURT: Ladies and gentlemen, at this particular moment I feel perhaps there are a few words of law that might be of assistance to you in your future guidance. Those are these.

Mr. Beller in the course of his earlier remarks has from time to time used the word "they". Now I want to say in that connection arguments of any lawyer here, be it prosecution or defense counsel, is nothing more than an argument to you. If the argument commends itself to you you are to accept it. If the argument does not commenditself to you you are to reject it.

Now in your determination in this case of whether a defendant is guilty or not guilty you have to keep in mind that guilt is a personal and an individual thing. I will charge you this again in my formal charge.

I say the fact that certain persons named in this indictment have pleaded guilty and are not before you is not evidence of guilt of any other defendant. I said this to you earlier, but I think it's appropriate to tell you now. It is not evidence of the guilt of any other defendant or that the offenses charged against those in court were committed by them. Whether a particular defendant is guilty or not must be determined by you beyond a reasonable doubt solely upon the evidence introduced against that particular defendant or the lack of it, and the reasonable inferences that you determine flow from the circumstances and the direct evidence before you and that determination must be made upon the evidence relating to that particular defendant and not anything else. Thus, in making that determination as to each defendant you're going to be required to make your own evaluation of the evidence.

Now given those comments let's go forward.

Mr. Beller.

MR. BELLER: Thank you, your Honor.

Before I leave this area I want to say that the Government asks you to consider all of the evidence, all of the testimony.

Jack Brown says something about Michael Parker. You heard what Michael Parker said from the witness stand. Same about Ann Reynolds. Same about Luis Sureda and so on. And I believe as his Honor will charge you, you know that one of the offenses in this indictment is a conspiracy count, and on that count you may consider virtually all of the evidence that's in the record. I think his Honor will tell you as to each particular pieces of evidence are only admissible as against maybe one or two defendants or particular defendant but you will have defined in the conspiracy count before you may convict, find beyond a reasonable doubt that there was a conspiracy and then consider whether or not each of the defendants was a memb[illegible] of that conspiracy.

MR. KRIEGER: If your Honor please, that's within your province, sir.

THE COURT: No. Go ahead.

MR. BELLER: And you may consider all of the testimony as to the issue of was there a conspiracy, the testimony of Brown, the testimony of Michael Parker, the testimony of Sureda.

MRS. ROSNER: Objection. That's not accurate. They're limited pieces of evidence here.

Could he not charge the jury --

THE COURT: Overruled.

MR. BELLER: So for example as I said there are some pieces of evidence that you won't consider and his Honor will tell you which particular ones those are, perhaps five, ten small pieces of testimony in the 420 exhibits that are in evidence, but for example take the travel documents. Just because they say the name Angelo Rodriguez and Tony Alvarez and Nelson Alvarez doesn't mean that they're only admissible against them.

When you are taking into account the question, did a conspiracy exist, has the Government proved the existence of a conspiracy, you may consider all of the evidence in this case against all of the defendants with the particular exceptions that his Honor will point out.

The Government submits and you may find to the extent that the testimony of Sureda and Michael Parker, Ann Reynolds told you that Jack Brown was not lying about them, you may also find that Jack Brown was not lying

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about these defendants. Therefore you must look at all of the evidence the Government asks to. Don't think for a second that just because I discuss particular pieces of evidence and arguments have been made about it by particular lawyers that that's at all a reasonable way to look at the case or the Government's asking you to do that, or that you should conduct your deliberations in that way, because it's not.

Now while we're on this subject I do want to say a couple of words about conspiracy. His Honor will charge you on the law of conspiracy. Various counsel have made arguments with respect to the conspiracy count in the indictment. That's Count 1 that I just want to address myself to.

Now one thing they said is that you should consider each defendant separately and that what the Government has done here is just throw anybody that knew Jack Brown into this indictment. Well they say you should consider each of the defendants separately. The Government asks you to do that, invite you to do that, and his Honor will charge you that you must do that, you must do that under your oath. You must consider each defendant as an individual and make a determination as to him individually and separately. But it's preposterous to say that these people are here because they knew the Government's witnesses. I think Mr. Richman pointed to a couple of you and he said, you could be charged in a conspiracy to talking together. That's a silly argument.

MRS. ROSNER: Objection. An objection was sustained to that and the jury was told to disregard it.

MR. BELLER: That's correct. And the Judge told you not to take that --

MRS. ROSNER: So why is he summing up on it?

MR. BELLER: Because then Mr. Figueroa came back and said exactly the same thing again. Mr. Figueroa said that if he had known Jack Brown he could be a defendant in this case, and that's also a silly argument. I'm not exactly sure I understand what he meant by it, but if he meant --

MR. FIGUEROA: Your Honor, I object to what I might have meant.

THE COURT: I overrule that objection.

Go ahead.

MR. BELLER: This case is not a case about people knowing each other. It's a case about people dealing in heroin and cocaine over a substantial number of years. This is not a case about ideas. This isn't

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a case under the First Amendment. It's not a case about people getting together and speculating, and sort of imagining what it would be like to do this, "What do you think about that?"

"Let's think about that in some ivory tower in the university," or just as an abstract discussion. That's not what's going on here. It's not a matter of knowledge. These people got together. They agreed to distribute narcotics and they went out and they did it over a period of many, many years.

Now another argument that was made by some of the attorneys was that there was no evidence in the record to show that a particular defendant knew every other defendant, and I believe you may recall that Mr. Anolik when Mr. Brightman was on the stand asked him, he started running down the indictment, and he asked him about various people. He skipped over Solo Glaze. But he asked him about all the defendants who were on trial. And Mr. Brightman said, well I only know such-and-such people. I think he said he only knew Mr. Moten. And other counsel didn't make that argument, and the record reflects that with several of the defendants they knew if not all of the other defendants on trial, or all of the other people who were named in the indictment, they knew many of them.

The record reflects that they were dealing in drugs together, that they were all in the narcotics business together, or each in his own bailiwick.

Now his Honor will charge you on this issue of who knows who and what's required and so on. But I believe he'll also charge you, and you may consider this, that a conspiracy in narcotics is like a business. In this case it's a big business. It's an enterprise.

His Honor will charge you that there is no requirement, and this comes from common sense, that each of the defendants know all of the other defendants. I'll give you an example that may be from every-day life that might be of some use. Have you ever seen the picture of when --

MR. MITCHELL: Your Honor, this is not rebuttal.

THE COURT: Overruled. Go ahead.

MR. BELLER: I remember seeing once a lithograph or some sort of picture of what happened when the transcontinental railroad was built, and when the groups, the group that was building from east to west met the group that was building from west to east, and there is a big, you know, a lot of happiness and everybody comes together. Just bear that in mind for a minuted. Just make believe there is a railroad track that's being laid east to west.

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They're going to meet some place in the middle, and there's a group that's working over here and they're working their way slowly in this direction. There is another group working its way from over here and they're building the same railroad track coming together in the middle.

The people who were over here, well, they may know a couple of people who work with them. They may know the person who is next hitting the rails or something like that. He probably doesn't even know all of the people who are working together in this group, and he certainly doesn't know the people who are building frm the other end, the people who are coming from California let's say to meet in Kansas. They may not know each other but the people who are in this group they should know that there is another group building from the other end and they're all going to get together at some point, and they're going to finish this enterprise. They don't know each other but they know the existence of each other and they know that each of them has an important part to play.

MR. ANOLIK: Your Honor, I object and ask that you instruct the jury that you alone will define conspiracy.

THE COURT: No, this is not such a definition. This is argument just as Mr. Mitchell's dreaming was argument.

Go ahead, sir.

MR. BELLER: They know that each of them plays a vital role in the success of this venture. They don't know each other. They don't know each other personally but these people over here they know that those people over there are building that track just the same way. They may not know the name of the person who is sending down the hammers, the name of the person who orders the rails, the name of the person who orders the nails, but each worker down there on the track he knows that there is such a guy. He knows that there are managers, there are people who are making decisions about supplies, there are people who are making decisions about bringing all the equipment in, there are people who make decisions about distributing it; people who get them the equipment to work with so they can use their hands and build the railroad and meet with the other people whom they don't know, but whom they know exist, and all of whom are essential to this whole enterprise to get that railroad running.

Henry Ford on an assembly line. I mean you have an assembly line. I'm not going to go into the whole thing. People don't know everybody who work on the assembly line. You know your neighbor, it may be a friend that you come to work with, but there is somebody at each post. He does his own job. He does what he has to do to insure the success of the venture. You think Henry Ford gets down on the assembly line? He doesn't. He makes decisions. He makes important decisions that regulate what is going on, and he's as much a part of the venture as anybody on that assembly line and vice versa.

Do they know each other? No. But are they all part of the same venture? Are they all critical to the success of building that car? They all are, and it's just the same way with the narcotics business.

Frank Moten, he didn't lug those suitcases up from Miami. He didn't get them and cut it and package it, and he didn't get it out into the street. But he's like Henry Ford. He doesn't make the hand deliveries like that. He doesn't get out on the street and put it in plastic bags in $2 and $5 bags and give it to addicts in the street. Henry Ford doesn't get on the assembly line. Frank Moten doesn't package $2 bags. They're all part of the same enterprise, the same venture.

On this level each of the defendants had his own place, his own role and he knows that the success of the whole venture depends on what he does and what other people do, people like him, people who have tasks that are different. If Jack Brown didn't have all these customers he'd have been of no use to Tony Alvarez and Angelo Rodriguez. What were they going to do? How were they going to get rid of 15, 18, 20 kilos of cocaine two or three times a year? If he didn't have the customers he wouldn't have had the suppliers. And what made it possible for Tony Alvarez and Angelo Rodriguez to sell cocaine to Jack Brown? What made it possible for Capra, Guarino, Beansie and for Sebastian Intersimone to sell heroin to Brown was the fact that Boot and Lois came up every couple of weeks to get stuff, to get heroin and cocaine; that Hightower and Chinch were getting heroin and cocaine every week; that Yvonne Schennault and Don Wilson were able to buy the quantities of cocaine that they did.

Common sense shows us how each of these defendants played a vital role in the success of this venture.

Now I am going to go into some of the factual arguments made by various defense attorneys and there were several times they were similar. Sometimes they were a little bit inconsistent with each other. And it's important to consider some of these in a general way for just a moment.

Now you've heard some talk from some of the

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defense attorneys -- Mr. Anolik comes to mind -- about my job and about the job that the Assistant United States Attorneys do, what Miss Cushman, what Mr. Sear and what I do, and they have told you that our job is to prosecute, prosecute some cases, prosecute cases. I think Mr. Anolik said, "Sometimes you get truthful witnesses. Sometimes you get liars. The boss gives you the cases and you go ahead and put them on."

So some of the defense attorneys said that we did this job very competently and some said other things which l'll talk about a little bit later, but I want to talk a little bit about their job. Now what is a defense attorney supposed to do at the end of a trial when he gets up to sum up?

MR. MITCHELL: Your Honor, that's not rebuttal. No aytotney said what he was supposed to do.

THE COURT: Mr. Beller, go along here and let's see where we get.

Overruled.

MR. BELLER: Well he has to represent his client and the idea is to tell you things to give you an argument that does what? It gets his client off. It gets his client acquitted.

MR. KEEGAN: I object. That's not the job.

MR. ANOLIK: That's ridiculous. It's to do justice.

MR. RICHMAN: Search out for the truth.

THE COURT: Mr. Beller, go ahead.

MR. HERWITZ: Well I don't object. I agree.

MR. BELLER: I don't mean it in a pejorative sense. That's his job. Our job is to prosecute and their job is to defend their client, and their client's interest here is to get off, not to be convicted.

MR. KEEGAN: Your Honor, we haven't said it's Mr. Beller's job to get convictions and he shouldn't say it's our job to get people off.

THE COURT: There has been some argument by certain counsel along those lines.

Go ahead.

MR. BELLER: And the Government submits to you that that is what a defense attorney is obliged to do, to say what is reasonable, to do his job, to get his client off. Now this argument, but obviously there has never been a single case in the history of trial practice where a defense attorney has gotten up here and said --

MR. BLACK: Objection, your Honor.

MRS. ROSNER: Objection. Is that part of this record?

THE COURT: Mr. Beller, I think we're on perhaps soft ground.

MR. BELLER: I am only giving argument, your Honor, and I'm talking --

MRS. ROSNER: It's not part of the record.

MR. BELLER: Of course it's not part of the record.

THE COURT: Nothing that has happened or might happen in any other case is really part of this case.

MR. BELLER: I only mean it by analogy, but in this case could it be that a defense attorney would get up and say to you, "There's enough evidence."? It would never happen. That's not -- our job is to prosecute. Their job is to serve their client's interests which means to get their client off.

MR. KEEGAN: I object to that.

MRS. ROSNER: I object and I move for the declaration of a mistrial, your Honor.

MR. HERWITZ: If your Honor please, I object.

May I be heard? I object and as a matter of record of this Court, not in this case, could show I have done exactly what Mr. Beller says is not done, and he's too young to talk at the bar about what lawyers do.

THE COURT: Motion is denied.

MR. BELLER: Well they have said, each lawyer has presented to you an argument that he believed was consistent with his obligations in this case, an argument which ended with a claim to you, and urging to you not to convict their client.

MR. HERWITZ: I object to that, your Honor. That is a misrepresentation of our duties. We're not presenting arguments in order to discharge an obligation, and I think that's a wrong thing to say, your Honor.

THE COURT: All right.

MR. BELLER: Well, let me --

MR. ANOLIK: I think there are certain ethics in the court. I think he should not do --

THE COURT: Mr. Beller, go on, please.

MR. BELLER: I'm going to do now certain general types of arguments that have been made in this case.

Now one of the attorneys, I don't remember which one it was, I think it was two days ago, one of the attorneys said, "How come there's no confession against my client?"

So you would think that if we had a confession we would be in business. But you've heard Mr. Mitchell's argument. Mr. Mitchell got up and he told you "Oh you

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know you read in the newspaper that the man walks into the police station and he says, 'I did it.' Well these confessions here against my client they're not worth anything, and Jack Brown's testimony --"

5 MR. MITCHELL: I didn't say that, your Honor.

THE COURT: Overruled. Thios is argument. Go ahead.

MR. BELLER: "Jack Brown's testimony about my client is a figment of his imagination."

Even though it said in two confessions, not one, two confessions that Albert Lee Jones was getting his heroin from Jack Brown. Albert Lee Jones didn't walk in off the street into a police station. He was caught with 600 grams of heroin. That's one kind of argument.

Now some of the defense attorneys have said, "Michael Parker, he's a liar. He's a bum. He's an out-and-out liar," favorite phrase, "Out-and-out liar. Lazy bum. And a stooge." That's what some of the attorneys said. But not Mrs. Solleder, and not Mr. Gotkin and not Mr. --

MRS. ROSNER: Your Honor, I would object. We are not bound by or responsible for each other's arguments.

THE COURT: Right, true.

MRS. ROSNER: I object.

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THE COURT: And the jury is so instructed.

You are instructed that counsel are not bound by each other's arguments.

Go ahead, Mr. Beller.

MR. BELLER: So not Mrs. Solleder and not Mr. Gotkin and not I believe Mr. Leff. They sort of liked these witnesses they tell you, they're truthful because they don't incriminate their client.

What about Jack Brown? They don't have to really catalog the names that he was called. You know that these defendants didn't call Jack Brown psychotic, sick, a liar, favorite phrase, a liar, when they ran to him for more drugs to make their money from him. Many of the defense attorneys have engaged in a kind of name calling during the summations, because they think somehow that that's helpful.

MRS. ROSNER: Objection to what they think. Objection to defense counsel's state of mind.

THE COURT: This is argument.

MR. BELLER: They think it would be somehow helpful to you in your deliberations to think about Jack Brown as a liar.

MRS. ROSNER: Especially if it's true.

MR. BELLER: But not all of them. Mr. Rosenbaum

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said, "Well I don't have to adopt Jack Brown, but even if I do, he doesn't incriminate my client." He sort of liked Jack Brown's testimony because he said, "Look at the record. Look at what Jack Brown said about my client. Didn't say anything."

(Continued on next page.)

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T5 When it's good, believe it. When it's bad, don't believe it. That's one style.

The phone charts. I like this one. Almost all of the defense attorneys have said it doesn't mean anything, they're not important. Sure, we concede that my client knew Jack Brown, there never has been any dispute about it. Who says that? It's conceded because it's up there. That's why it's conceded.

They tell you it doesn't mean anything, and I mean various of the defense attorneys, I'm not going to catalog each one. It doesn't show anything. It shows they knew each other. That would be all right if there was no testimony, but the testimony in this case is that these relationships were founded on that they were centered upon and that they were concerned with narcotics, and that's what those charts prove. Not that a particular phone call was about drugs, but it proves the association in this case which the witnesses say is based on drugs. And we know that because of one of the summations, the summation by Mr. Diller for Tobe. He pointed out to you and rightly so, that Tobe, James Laws, James Laws' name does not appear on the chart. Does he concede a relationship? Does he say no, no dispute about that, of course he knew him? No. He says different Tobe, he couldn'

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identify him in court, it's a different Tobe or he doesn't know this Tobe or what.

Now here are a couple of more. Mr. Martin said why don't they call another witness. Mr. Black says why they don't they call these other people, Penny Perez, Jody Brown, where is Connie Garrett, one of the attorneys said. So you do call another witness: Michael Parker. lying.

Mr. Keegan said where are the props.

Mr. Yon says it doesn't mean anything.

You call a family member. What do they say? Stooge for Jack Brown. What would have happened if we called Penny Perez. She is not here, so a defense attorney says where is Penny Perez, as if she had come in here and given testimony about their client, they wouldn't have said Jack Brown's girlfriend, he was with her all the time. What is she going to say, Jackie Jordan, Jack's wife, Jack Brown's wife?

MR. RUBINSTEIN: Objection, your Honor.

THE COURT: Overruled.

MR. BLACK: The only thing is why didn't they call her.

THE COURT: Overruled.

MR. BELLER: Right. The argument is why didn't we call her.

If the witness is consistent with another witness, Mr. Anolik said brain washed, Manchurian Candidate. If they are inconsistent: liars, out and out liars.

MR. ANOLIK: I never used such decibels, your Honor.

MR. BELLER: Some of the attorneys argued that anyone who knows Brown is a defendant. Somebody else argues where is Jimmy Lofton, how come he is not here. Connie Garrett, how come she is not here. That's defendants. There is a difference between defendants and witnesses.

His Honor will charge you that you cannot consider who is not here as a defendant. That's not in issue here because there is nothing in the record about it. Your function as a jury is to consider the evidence against the defendants who are on trial and --

MR. KEEGAN: That is a misstatement of law.

THE COURT: I will inform them what I will inform them. Go ahead.

MR. BELLER: It is basically an invitation for you to speculate. Where is Connie Garrett, Jimmy Loften? There is no evidence in the record about where they are. It's an invitation for you to speculate and you must not do that under your oath.

MRS. ROSNER: Objection. The jury can consider lack of evidence. Objection to Mr. Beller charging the jury.

THE COURT: I object to your observation which has nothing to do with what Mr. Beller is saying. Overruled. Go ahead.

MR. BELLER: So these are the various types of arguments, the general types that are made in this case, totally inconsistent, never enough evidence. There is never enough that any government prosecutor, that any case can do.

MRS. ROSNER: Objection.

MR. KEEGAN: Objection, your Honor.

MRS. ROSNER: Objection to "there never is."

THE COURT: Overruled.

MR. BELLER: There never is enough evidence. Throw everything up there, throw anything up there to confuse you and to divert your attention from what is there.

Now let me go to each of the defense cases. I'll do as much as I can.

THE COURT: We will sit about 15 minutes more tonight.

the stand and say he was guilty of certain charges. That's unusual, concededly so, but to convey to the jury that we are just discharging as best we can in the face of this overwhelming evidence, merely our obligation as attorneys, I respectfully submit it is not fair argument and on behalf of the defendant Foster I move for a mistrial.

MR. KRIEGER: I respectfully join in the application.

MR. REID: I join in the application.

MR. BELLER: I know I said at the end of a trial in summation. I know that I said that.

MR. COHN: Your Honor, may I just say that it seems to me that calls into question the whole proceeding whereby by entering of a nonguilty plea, we invoke the presumption of innocence and that's the point here. We pled not guilty. That must mean something to the jury. It seems to me Mr. Beller is trying to make a mockery of that presumption.

MRS. ROSNER: Judge, I know it's late and I'm exhausted, but I feel absolutely necessary to make this argument. I think Mr. Beller past all fair ground of comment and I only discontinued objecting because the court I don't think was understanding the thrust of what defense counsel was saying and was sustaining objections and I felt I would only hurt my client by continuing to reiterate basically the same objection. I move for a mistrial on the following deal on sentence," that we sit here and we let that go into the record and don't correct it.

But really the most disgraceful argument of all is that to believe that, to believe this argument you have to say that the Court that sat through all of this testimony about agreements, that the Court has heard this testimony that there is no promise made with respect to sentence, has heard the witnesses say that, that they don't know what the Judge will do, that the Court has sat here winking throughout all that testimony and that he, Judge Owen, is going to reward these liars for convicting innocent people. That is what --

MR. BAKER: I object, your Honor.

MR. ANOLIK: I object. I ask for a mistrial.

THE COURT: Overruled.

MR. BELLER: That is what that argument, that the witnesses know they're getting their freedom, that's what that argument means. Think about it. It's talk. It's not in the record, and it's totally false.

Now I want to tell you again I hope that you will reject those kinds of arguments, but I want to ask you to consider all of the arguments made by counsel who did stick to the record, and there were many of them, and I've gone over that, and it's your view where the arguments are made on the record, the Government asks you to evaluate those, and take arguments of all counsel that are reasonable and that are based on the facts in this case and based on the record.

The Government is confident that you'll do that. The only concern that the Government has at the end of this very long trial is that some of you may find it difficult to reach a verdict. You may find that a little bit difficult because of sympathy, and the Judge will charge you that sympathy has no role in your deliberations. I want to tell you that although sympathy should have no part at all in your deliberations, it can't, consistent with your oath, that part is taken into account by the system and it's a matter that's left in the hands of the Judge.

MR. MITCHELL: Objection, your Honor.

THE COURT: Yes. I would charge on the sympathy plays no part in your deliberations.

MR. BELLER: Ladies and gentlemen, the Government submits that it has proved the charges in this indictment. The evidence establishes the existence of a mammoth narcotics conspiracy lasting from 1968 through the filing of the indictment really through 1975. An enormous narcotics conspiracy in the trafficking of heroin and cocaine, narcotics drugs coming down from suppliers, down through various levels. Remember the chart. Ultimately into the street addict in various communities, urban centers in the United States including our own, and the chain of distribution of money going in the reverse order. That's what this case is about, those two things.

Now you've been told by defense counsel that the Government has an obligation to justice. It's my obligation, it's Miss Cushman's obligation and Mr. Sear's obligation in this case and in every case, and it's also the obligation of everybody here all defense counsel are pledged to that, the Court, you, everyone.

Our role in this case is finished and the Government asks and really no one can ask anything more that you do justice in this case and you do justice to your oath. The Government submits to you that justice in this case means that you find these defendants guilty of the crimes charged.

THE COURT: Ladies and gentlemen you are excused now until 10 o'clock in the morning at which time I will charge you on the law. Overnight continue to keep an open mind. Do not discuss the case amongst each other or with anyone else. If anything should appear in the news media of any kind disregard it entirely. See you in the morning.

(Jury left courtroom.)

THE COURT: We have one application.

MR. BAKER: First I move for a mistrial based on what I believe shows flagrant statements, an outrageous statement with regard to not only did they put all of their character and integrity into the fact before the jury. I know certain defense counsel did that, but unfortunately I'm tarred with that, and although Mr. Beller said, I said they were decent, he did it and he did it in a very extreme way, and he put the Court's integrity and character into issue by that statement. "If you think the Judge is sitting up there winking at everything." And I think it was just totally uncalled for. It went well beyond the bounds that were necessary.

THE COURT: I think he characterized that as a certain argument that he had heard and that that was a logical, necessary and integral part of the arguments that he had heard. I don't think the jury could reject that argument.

Am I correct in that, Mr. Beller?

MR. BELLER: Yes, your Honor, that they can find that the witnesses know they are getting their freedom and that there are terms outside the written agreement. Somehow you have to know about that because you're the one that's going to sentence them.

THE COURT: Motion is denied.

MR. ROSENBAUM: I don't think that any counsel here has impugned the integrity of the Court or said that the Court is an accomplice in some way to the subornation of perjury.

THE COURT: I don't think that either.

MR. ROSENBAUM: The jury could have drawn that inference, and I would ask that the Court give a separate limiting instruction to the effect that no counsel has impugned the integrity of this Court.

MR. FRANKEL: No.

MR. BELLER: I would disagree with that statement.

THE COURT: I don't think there is need.

(Continued on next page.)

MR. MITCHELL: Your Honor, there is one thing I couldn't raise at summation for the simple reason that I didn't want to go into it in front of the jury. Mr. Beller brought in the fact that Parker had pled guilty to the conspiracy count and therefore the court can sentence him from zero up to 15 years. What he left out and what I couldn't say and what I will ask your Honor to instruct the jury, that they got something additional is they pled to the new law. Although Parker was in a conspiracy before May, '71, he was pleading guilty as if before May, '71.

THE COURT: What difference does that make?

MR. MITCHELL: It makes a difference of a mandatory five years on the sentence.

THE COURT: The jury's task has nothing to do with sentencing. It has to do with the finding of guilt or innocence and my job is sentencing, the sentencing job.

MR. MITCHELL: I'm objecting to him bringing in how much punishment they could get.

THE COURT: I think somebody brought that out on the trial.

MRS. ROSNER: I did on my cross-examination.

THE COURT: Mrs. Rosner's cross-examination.

MR. COHN: Your Honor, I don't want to bureen the record with chapter and verse. I move for a mistrial. On balance, it was a gross violation -- I'm not saying that as an advocate --

THE COURT: Mr. Cohn, I trust you really believe everything you say.

MR. COHN: Sometimes you protect your record, your Honor, and sometimes you just get mad. I'm mad clear through. This was the most outrageous thing. He tarred every one of us, he says: I told you who was fair and who wasn't. He never said anything about me when he summed up and all of a sudden we have all of this they said. He said: "If he" -- referring to Brown, "goes back to anyone in that business, he is a dead man."

He inferred that any one of these people in this room would kill him. If that's not appealing to every piece of prejudice and bias in that jury, for a character, for the most evil character, wanting to kill witnesses, I don't know what is. I can't remember all the things he went through. He argued outside the record. He talked about --

MRS. ROSNER: Why don't you reserve it until you get the record in the morning?

MR. COHN: The piece of business about Judge Frankel, although he corrected himself.

THE COURT: What difference does that make?

MR. COHN: He was totally outside the record. He had no right to say it and all of a sudden he is saying--

THE COURT: There was testimony--

MR. COHN: Just as Judge Owen --

THE COURT: Mr. Cohn, there was testimony, I think it was Judge Bonsal but in any event, what difference does it make?

MR. COHN: There was no testimony Judge Frankel tried the case -- he has drawn the analogy with you,your Honor.

MR. KEEGAN: May I say a couple of other things before we make a motion for mistrial. Mr. Beller mentioned Marsha Ladd's testimony had resulted in 27 convictions and therefore the --

MRS. ROSNER: That was totally outside the record.

THE COURT: Wasn't that fact brought out?

MR. KEEGAN: I would have to check to find out. I think it's improper even if it is in the record that her testimony had resulted in conviction. He said she looks over her shoulder every day of her life. He talks about Paradise, Joe Paradise and Pretty Willie as if these defendants had anything to do with the death of these people, they are all murdered drug dealers. He said the pressure was too much for him at the slightest hint, and that he was dead. This is a ruthless business and the greed of these men, his associates, Brown's associates was what caused himself to turn himself in, and wishing that the federal indictment had not been dismissed is absolutely false because the federal indictment of Brown had not been dismissed until after he turned himself in and started his cooperation.

THE COURT: I want to observe the proof of the murder of other narcotics dealers was clearly admissible to explain Brown's state of mind at the time he turned himself in and that state of mind was brought into the record by defense counsel. That I have a little problem with. I have less problem, frankly, with other things.

MR. KEEGAN: Your Honor, from the argument, these people are testifying in the hope they will not have to go to jail, and turn that around and saying therefore these defense attorneys are arguing that Judge Owen is in on this illegal deal is outrageous and it is not even supported d2 by the argument made by defense counsel.

Their hope to go free does not mean--

THE COURT: Why don't you wait until you read the minutes.

MR. KEEGAN: I have written this down.

MR. BELLER: Mrs. Rosner said either they are not going to get their freedom or--

MRS. ROSNER: Freedom doesn't necessarily mean no time in jail. It means they save a substantial portion of their lives in jail.

THE COURT: Freedom to me means no jail at all. I heard that louder than usual.

MRS. ROSNER: Freedom sooner than later, Judge.

Your Honor, two specific applications. Mr. Beller being a very intelligent man and understanding that he cannot directly comment on a defendant's failure to take the stand, but understanding the high probative, prejudical, impermissible value of that kind of argument, drew an analogy to Michael Parker: Just suppose Michael Parker came before you and made these arguments with respect to Jack Brown's testimony? Jack Brown hates my guts, of course I don't get on the stand to testify, so you don't hear what I have to say. Would you believe Michael Parker under those circumstances and would you believe Frank Moten? Absolutely disgusting, unsuitable argument below the stature of a prosecutor in this office and I move for declaration of mistrial.

THE COURT: I deny that. If you want to show me the place in the record tomorrow, I will reconsider.

MRS. ROSNER: Why don't you ask Mr. Beller if he made that--

MR. BELLER: I haven't the slightest idea what Mrs. Rosner means.

THE COURT: Have you got any other application?

MRS. ROSNER: One other, your Honor. With respect to Lina Gotes, Mr. Beller incorrectly stated that she had no motive to testify. In fact, at the side bar he said in return for her cooperation the government has promised to help to do something with respect to her boyfriend, I think get him a job. That wasn't in the record, but he misrepresented to the jury that she had no motive to testify. It wasn't in the record but it was false.

THE COURT: It was in the record.

MRS. ROSNER: It was not in the record.

THE COURT: I seem to recall testimony--

MR. BELLER: Mr. Sear tells me, I'm not sure I was present at the side bar--

MRS. ROSNER: I can't hear you, Mr. Beller.

MR. BELLER: Maybe we can do it tomorrow.

MRS. ROSNER: I can't hear you, Mr. Beller, and I would like to.

THE COURT: If everybody in the room will be quiet, Mr. Sear will be heard.

MR. SEAR: At the side bar, your Honor, I advised counsel prior to cross-examination that before she testified she inquired of me about this job for her boyfriend and some assistance in that area and I placed on the record the fact that I viewed it as an obligation arising out of her earlier testimony because he, not just she, but he had been in the Witness Protection Program and at that time, that is in connection with her prior testimony, he felt that the Witness Protection Program had obligated itself to help him in this regard and I said, I just wanted to tell counsel about that. I didn't view it as a promise we were giving for her testimony.

MRS. ROSNER: It was not in the record, but what the prosecutor represented at the side bar was that the government has promised to help this woman and her boyfriend. Then Mr. Beller stands up in summation and tells the jury: She's got no motive to testify, making a flat misrepresentation on a matter not in the record. The same with Marsha Ladd. She has no motive, she's getting $500 a month from the government.

THE COURT: Did anybody put in the jury's record the statement that there was a promise to get her boyfriend a job?

MRS. ROSNER: It is not in the record.

THE COURT: Then it isn't before the jury and if no counsel felt it was worthy putting it before the jury, I see no problem.

MRS. ROSNER: That doesn't give him license to lie before the jury.

THE COURT: Mr. Sear said he didn't regard it as a promise to her and if no counsel regarded something they feel should be explored as a promise to her, then where is the complaint?

MRS. ROSNER: She had an anticipated reward which could have colored her testimony. He cannot stand up before the jury and say she had no motive when he knows the government is promising to do something or offering to do something for her.

THE COURT: It seems to me with all the efforts counsel made to indicate that witnesses had promises made to them to reduce the testimony, if defendants' lawyers thought it was substantial enough to influence the testimony it would have been made part of the record and not having been made part of the record, I deny the application.

MR. ANOLIK: Your Honor, may I ask one more thing. Besides repeating my objection as to the length of summation as being ipso facto a denial of due process, I hph9

think Mrs. Rosner overlooked the fact that I believe Mr. Beller stated that Mr. Moten did not call any character witnesses when he was talking about the view of my client as maybe would be a witness under other circumstances.

d3 I believe he made that statement, your Honor.

MR. HERWITZ: May I be heard, your Honor. Before the last session at the recess, you asked me something about the marshaling of the evidence, and I have had time to think about it since then and I would like to go on record as follows: If your Honor marshals the evidence with respect to the defendant Foster, I request that you include in that the fact that I have submitted to you it should be. I make no demand with respect to that. I will leave that to the court's judgment.

MR. MARTIN: I would join in the application made.

MR. REID: Likewise, your Honor.

(Time noted: 5:45 P.M.)

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As I instructed you earlier, it is not necessary in order for the government to prove its case of conspiracy to violate the narcotics laws that there be proof of actual dealings in narcotics. All that need be proved is that there was an unlawful agreement and an overt act committed in pursuance to the agreement. The conspiracy is a crime in and of itself, separate and apart from the crime of importation, purchase, sale and transportation of narcotics. The rule is different, however, with regard to the substantive violations of the narcotics laws about which I am now instructing you. Here you must be convinced beyond a reasonable doubt that the substance distributed or possessed with intent to distribute was in fact a narcotic drug. But it is not necessary to be proved by direct evidence. Just as with any other component of a crime, the existence of and dealing with narcotics may be proved by circumstantial evidence if you credit it. There need be no sample placed before you nor need there be testimony by a qualified chemist so long as the evidence furnishes you with a reasonable ground for inferring that the material in question is narcotics.

There are several categories of circumstantial evidence which you may consider in determining whether a given defendant possessed the narcotics drug as charged:

1. The testimony that someone had personally tested samples from the powder.

2. The secretiveness and deviousness in which the transactions were handled, such as for example code words or concealing the substance.

3. The fact that the substance in which they were dealing was a whitish or brown powder.

4. The high prices paid in cash for the substance.

5. The lack of complaint on the part of purchases.

6. Descriptive language used in certain transactions.

7. Actual or stipulated testimony by qualified experts that such substances were indeed heroin or cocaine.

These are matters to which you can look, which if they commend themselves to you would justify you finding that the substance charged was in fact a narcotic drug.

As an example, the government contends that Juan Antonio Rodriguez delivered cocaine to Jack Brown

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on several ocasions; Frank Moten delivered on two occasions cocaine to Jack Brown. The government contends on two occasions the participants used a portion of the merchandise to test whether it was cocaine, and Brown has testified that it was. In addition, several of the United States and state chemists have testified various substances found or seized at various times were or contained traces of narcotic drugs. This is the kind of evidence that is suggested to you by the government.

I also wish to charge you with respect to the substantive counts. In order to find that a defendant aided or abetted another in possessing a narcotic drug controlled substance with intent to distribute it, you must be satisfied that the particular defendant in some way knowingly associated himself with the criminal venture in a meaningful way, knowingly participated in it as something he wished to bring about by some action of his to make it succeed, that he had a stake in its outcome. In other words, is one fully aware of what he is doing plays a significant role in furthering a transaction prohibited by law, he is an aider and abettor, and as such he is equally guilty with the person who directly performs the illegal act or acts which constitute a crime.

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So I would simply ask the Court to charge "This was my entire charge concerning reasonable doubt and we don't deem it appropriate to say anything else on the subject."

THE COURT: Let's get the jury in.

(Jury present at 3.35 p.m.)

THE COURT: Your note, Court's Exhibit 25 requests Brown's testimony as to how he met Sureda. We will read it to you.

(Page 1080, line 4 through 1081, line 21 read.)

THE COURT: Now you have one other note here. It says request a definition of reasonable doubt and a few examples.

Now I'll read to you from my charge on that subject. The question that comes up is what is a reasonable doubt? The words as you can see practically define themselves. It is a doubt founded upon reason and arising out of the evidence in the case or the lack of evidence as the case may be. It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is a doubt which appeals to your reason, to your judgment, to your common sense and your experience. Reasonable doubt is not caprice, whim, speculation, guesswork, conjecture or suspicion. Reasonable doubt is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. If after a fair and impartial consideration of all the evidence you can candidly and honestly say that you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of his guilty, then in sum if you have such a doubt as would cause you as a prudent person to hesitate before acting in the matters in accordance to yourself then you have a reasonable doubt. In that circumstance it is your duty to acquit. If, on the other hand after such impartial and fair consideration of all the evidence you can candidly and honestly say that you do have an abiding conviction of the defendant's guilt such a conviction as you would be willing to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and under such circumstances it is your duty to convict.

One final word on this subject. Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule few persons however guilty would be convicted. It is practically impossible for a person to be absolutely completely convinced that any controverted fact which by its nature is not susceptible of proof by a mathematical certainty. Thus the law in a criminal case is sufficient that the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Now, ladies and genglemen, does that clear the question that you have put to me with this note, Exhibit 26?

JUROR NO. 1: You were to give an example if you can or will.

THE COURT: May I say to you in this regard this is my charge to you under the law of reasonable doubt and I do not deem it appropriate for me to prepare and think up examples for you as to it. I think you must take the law as I have charged you on it and apply it to the facts as You have them before you.

All right. Now one other question. The marshals tell me that they will require an hour to have your bus available, so you must therefore allow that much leeway when it comes time to decide when you want to cease labors today. In other words, if you want to go home at 6.30 you must let me know about 5.30 so that I can inform the marshals to prepare the transportation for you so have that in mind. If you wish to sit later that's your privilege. Govern yourselves accordingly, but we need an hour to prepare the bus.

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were not marked in evidence so I would object to the transcript going into the jury room.

MR. COHN: Send the tape.

MR. BELLER: There are references there to Mr. Hightower and Mr. Moten.

MR. KEEGAN: This is my application. I would like to be heard for once. If you don't want to send the tape and they've asked for all the evidence, then we have to send the tape.

MR. BELLER: I am delighted, your Honor, to let all the prejudicial evidence and the balance of the tape go to the jury.

THE COURT: The fact you give them the tape means nothing. You have to play it.

d25 MR. KEEGAN: You know I don't mean the entire tape. I mean the part offered in evidence and that which was played.

MR. BELLER: If you want me to give the box in, I'll be happy to do it.

MRS. ROSNER: Portions of the tape are not in evidence. Portions are and portions aren't.

MR. KEEGAN: We can start with the relevant portion. The only alternative is to give them the transcript of the tape.

Beller-AUSA

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United States District Court for

SOUTHERN DISTRICT OF NEW YORK

United States of America vs.

DEFENDANT: SEBASTIAN INTERSIMONE

DOCKET NO. 76 Cr 324 (R.C.)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
1	31	77

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL David Keegan, esq. (Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, X NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~/verdict of ☐ NOT GUILTY. Defendant is discharged
XX GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, combined, conspired with others to distirbute and possess with intent to distribute heroin and cocaine, classified as a Schedule I and II controlled substance in violation of sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, U.S. Code.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS on EACH of Counts 1 and 12, to run CONCURRENTLY to each other.

Pursuant to Title 21, Section 841, U.S. Code, the defendant is placed on SPECIAL PAROLE for a term of THREE(3) YEARS on EACH of Counts 1 and 12 to run CONCURRENTLY to each other and to commence upon his release from confinement.

IT IS ADJUDGED: the defendant be FINED the sum of $25,000.00 on Count 1 to be paid or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

SPECIAL CONDITIONS OF PROBATION

The defendant is to remain at MCC for a period of THIRTY(30) DAYS from today.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
X U.S. District Judge
☐ U.S. Magistrate

RICHARD OWEN

Date 1-31-77

CERTIFIED AS A TRUE COPY ON
THIS DATE 1-31-77
BY
( ) CLERK
(X) DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------X

UNITED STATES OF AMERICA :

-against- :

SEBASTIAN INTERSIMONE, :

Defendant. :

-------------------------------X

Judge Owen

NOTICE OF APPEAL

76 CR 324(RO)

SIRS:

PLEASE TAKE NOTICE that the above named defendant, Sebastian Intersimone, hereby appeals to the United States Court of Appeals for the Second Circuit from a judgment entered on the 31st day of January, 1977 (Owen, J.) convicting the defendant of counts one and twelve of the indictment herein and from each and every part of said judgment.

Dated: New York, New York
February 4, 1977

FORD MARRIN ESPOSITO WITMEYER
& BERGMAN

By______________________________
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